

15th day of the third month of the taxable year following the taxable year in which such sale or exchange occurs. The amount of such tax so paid shall be treated, for purposes of this section, as a payment of the first unpaid installment or installments (or portion thereof) which become payable under subsection (a) following such taxable year.

(d) Proration of deficiency to installments

If an election is made under subsection (a), and a deficiency attributable to the recovery of a foreign expropriation loss has been assessed, the deficiency shall be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(e) Time for payment of interest

If the time for payment for any amount of tax has been extended under this section, interest payable under section 6601 on any unpaid portion of such amount shall be paid annually at the same time as, and as part of, each installment payment of the tax. Interest, on that part of a deficiency prorated under this section to any installment the date for payment of which has not arrived, for the period before the date fixed for the last installment preceding the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

(f) Tax attributable to recovery of foreign expropriation loss

For purposes of this section, the tax attributable to a recovery of a foreign expropriation loss is the sum of—

- (1) the additional tax imposed by section 1351(d)(1) on such recovery, and
- (2) the amount by which the tax imposed under subtitle A is increased by reason of the gain on such recovery which under section 1351(e) is considered as gain on the involuntary conversion of property.

(g) Failure to pay installment

If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary.

(h) Cross-references

(1) **Security.**—For authority of the Secretary to require security in the case of an extension under this section, see section 6165.

(2) **Period of limitation.**—For extension of the period of limitation in the case of an extension under this section, see section 6503(e).

(Added Pub. L. 89-384, §1(d), Apr. 8, 1966, 80 Stat. 102; amended Pub. L. 93-625, §7(d)(2), (3), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94-455, title XIX, §§1902(b)(2)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1806, 1834.)

AMENDMENTS

1976—Subsecs. (a), (b), (d), (e), (g). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (h). Pub. L. 94-455, §§1902(b)(2)(B), 1906(b)(13)(A), substituted “section 6503(e)” for “section 6503(f)”, and struck out “or his delegate” after “Secretary”.

1975—Subsec. (e). Pub. L. 93-625, §7(d)(2), struck out provision that in applying section 6601(j) (relating to the application of the 4-percent interest rate in the case of recoveries of foreign expropriation losses to which this section applies) in the case of a deficiency, the entire amount which was prorated to installments under this section shall be treated as an amount of tax the payment of which was extended under this section.

Subsec. (h). Pub. L. 93-625, §7(d)(3), struck out par. (1) providing a cross reference for payment of interest at 4 percent per annum for period of an extension under section 6601(j) of this title, and redesignated pars. (2) and (3) as (1) and (2), respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(b)(2)(B) of Pub. L. 94-455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93-625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE

Section applicable with respect to amounts received after Dec. 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after Dec. 31, 1958, see section 2 of Pub. L. 89-384, set out as a note under section 1351 of this title.

CHAPTER 63—ASSESSMENT

Subchapter	Sec. ¹
A. In general	6201
B. Deficiency procedures in the case of income, estate, gift, and certain excise taxes	6211
C. Tax treatment of partnership items	6221
D. Treatment of electing large partnerships	6240

AMENDMENTS

1997—Pub. L. 105-34, title XII, §1222(c), Aug. 5, 1997, 111 Stat. 1019, added item for subchapter D.

1996—Pub. L. 104-188, title I, §1307(c)(3)(C), Aug. 20, 1996, 110 Stat. 1782, struck out item for subchapter D “Tax treatment of subchapter S items”.

1982—Pub. L. 97-354, §4(b), Oct. 19, 1982, 96 Stat. 1692, added item for subchapter D.

Pub. L. 97-248, title IV, §402(b), Sept. 3, 1982, 96 Stat. 667, added item for subchapter C.

1969—Pub. L. 91-172, title I, §101(j)(63), Dec. 30, 1969, 83 Stat. 532, inserted reference to certain excise taxes in item for subchapter B.

Subchapter A—In General

Sec.	
6201.	Assessment authority.
6202.	Establishment by regulations of mode or time of assessment.
6203.	Method of assessment.
6204.	Supplemental assessments.
6205.	Special rules applicable to certain employment taxes.

¹ Section numbers editorially supplied.

- Sec.
6206. Special rules applicable to excessive claims under certain sections.
6207. Cross references.

AMENDMENTS

2005—Pub. L. 109-59, title XI, §11163(d)(4), Aug. 10, 2005, 119 Stat. 1975, substituted “certain sections” for “sections 6420, 6421, and 6427” in item 6206.

1983—Pub. L. 97-424, title V, §515(b)(3)(B), Jan. 6, 1983, 96 Stat. 2181, struck out reference to section 6424 in item 6206.

1970—Pub. L. 91-258, title II, §207(d)(11), May 21, 1970, 84 Stat. 249, inserted reference to section 6427 in item 6206.

1965—Pub. L. 89-44, title II, §202(c)(2)(B), June 21, 1965, 79 Stat. 139, substituted “6420, 6421, and 6424” for “6420 and 6421” in item 6206.

1956—Act June 29, 1956, ch. 462, title II, §208(e)(3), 70 Stat. 397, substituted “sections 6420 and 6421” for “section 6420” in item 6206.

Act Apr. 2, 1956, ch. 160, §4(b)(2), 70 Stat. 91, inserted item “6206. Special rules applicable to excessive claims under section 6420”, and renumbered former item 6206 as 6207.

§ 6201. Assessment authority

(a) Authority of Secretary

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return

The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

(2) Unpaid taxes payable by stamp

(A) Omitted stamps

Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary determines to be liable for such tax.

(B) Check or money order not duly paid

In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) Erroneous income tax prepayment credits

If on any return or claim for refund of income taxes under subtitle A there is an over-

statement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph.

(b) Amount not to be assessed

(1) Estimated income tax

No unpaid amount of estimated income tax required to be paid under section 6654 or 6655 shall be assessed.

(2) Federal unemployment tax

No unpaid amount of Federal unemployment tax for any calendar quarter or other period of a calendar year, computed as provided in section 6157, shall be assessed.

(c) Compensation of child

Any income tax under chapter 1 assessed against a child, to the extent attributable to amounts includible in the gross income of the child, and not of the parent, solely by reason of section 73(a), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(d) Required reasonable verification of information returns

In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.

(e) Deficiency proceedings

For special rules applicable to deficiencies of income, estate, gift, and certain excise taxes, see subchapter B.

(Aug. 16, 1954, ch. 736, 68A Stat. 767; Pub. L. 89-44, title VIII, §809(d)(4)(A), June 21, 1965, 79 Stat. 168; Pub. L. 91-53, §2(b), Aug. 7, 1969, 83 Stat. 92; Pub. L. 91-172, title I, §101(j)(38), Dec. 30, 1969, 83 Stat. 530; Pub. L. 91-258, title II, §207(d)(1), (2), May 21, 1970, 84 Stat. 248; Pub. L. 93-406, title II, §1016(a)(8), Sept. 2, 1974, 88 Stat. 929; Pub. L. 94-12, title II, §204(b)(2), Mar. 29, 1975, 89 Stat. 31; Pub. L. 94-455, title XII, §1206(c)(2), title XIII, §1307(d)(2)(D), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1704, 1727, 1834; Pub. L. 97-424, title V, §515(b)(6)(E), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98-76, title II, §231(b)(2)(A), Aug. 12, 1983, 97 Stat. 429; Pub. L. 98-369, div. A, title IV, §§412(b)(5), 474(r)(32), July 18, 1984, 98 Stat. 792, 845; Pub. L. 100-203, title X, §10301(b)(3), Dec. 22, 1987, 101

Stat. 1330-429; Pub. L. 100-647, title I, §1015(r)(1), title VII, §7106(c)(2), Nov. 10, 1988, 102 Stat. 3572, 3773; Pub. L. 104-168, title VI, §602(a), July 30, 1996, 110 Stat. 1463.)

AMENDMENTS

1996—Subsecs. (d), (e). Pub. L. 104-168 added subsec. (d) and redesignated former subsec. (d) as (e).

1988—Subsec. (a)(4). Pub. L. 100-647, §1015(r)(1), struck out par. (4) which read as follows: “If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit allowable by section 34 (relating to certain uses of gasoline and special fuels) or section 32 (relating to earned income), the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph.”

Subsec. (b)(2). Pub. L. 100-647, §7106(c)(2), struck out “or tax imposed by section 3321” after “employment tax”.

1987—Subsec. (b)(1). Pub. L. 100-203 substituted “section 6654 or 6655” for “section 6154 or 6654”.

1984—Subsec. (a)(4). Pub. L. 98-369, §474(r)(32), substituted “section 32 or 34” for “section 39 or 43” in heading, and in text substituted “section 34” for “section 39” and “section 32” for “section 43”.

Subsec. (b)(1). Pub. L. 98-369, §412(b)(5), amended par. (1) generally, substituting “estimated income tax required to be paid under section 6154 or 6654” for “estimated tax under section 6153 or 6154”.

1983—Subsec. (a)(4). Pub. L. 97-424 substituted “and special fuels” for “, special fuels, and lubricating oil” after “gasoline”.

Subsec. (b)(2). Pub. L. 98-76 substituted “Federal unemployment tax or tax imposed by section 3321” for “Federal unemployment tax”.

1976—Subsec. (a). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (a)(3), (4). Pub. L. 94-455, §§1206(c)(2), 1906(b)(13)(A), struck out “or his delegate” after “Secretary”, substituted “mathematical or clerical error” for “mathematical error” after “the case of”, and inserted “, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph” after “upon the return”.

Subsec. (d). Pub. L. 94-455, §1307(d)(2)(D), substituted “and certain excise taxes” for “chapter 42, and chapter 43 taxes” after “estate, gift”.

1975—Subsec. (a)(4). Pub. L. 94-12 inserted reference to section 43 in heading and substituted “oil” or section 43 (relating to earned income),” for “oil,” in text.

1974—Subsec. (d). Pub. L. 93-406 inserted reference to chapter 43 taxes.

1970—Subsec. (a)(4). Pub. L. 91-258 inserted provision for overstatement of credit allowable by section 39 (relating to certain uses of special fuels) in text and substituted “under section 39” for “for use of gasoline” in heading.

1969—Subsec. (b). Pub. L. 91-53 added subsec. (b) heading and par. (2), and redesignated former subsec. (b), including its heading, as par. (1).

Subsec. (d). Pub. L. 91-172 inserted reference to chapter 42 taxes.

1965—Subsec. (a)(4). Pub. L. 89-44 added par. (4).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 602(b) of Pub. L. 104-168 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 30, 1996].”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1015(r)(4) of Pub. L. 100-647 provided that: “The amendments made by this subsection [amending

this section and sections 6211 and 6213 of this title] shall apply to notices of deficiencies mailed after the date of the enactment of this Act [Nov. 10, 1988].”

Amendment by section 7106(c)(2) of Pub. L. 100-647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of Pub. L. 100-647, set out as a note under section 3321 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100-203, set out as a note under section 585 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 412(b)(5) of Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

Amendment by section 474(r)(32) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98-76, set out as an Effective Date note under section 3321 of this title.

Amendment by Pub. L. 97-424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1206(c)(2) of Pub. L. 94-455 applicable with respect to returns filed after Dec. 31, 1976, see section 1206(d) of Pub. L. 94-455, set out as a note under section 6213 of this title.

Amendment by section 1307(d)(2)(D) of Pub. L. 94-455 effective on and after Oct. 4, 1976, see section 1307(e) of Pub. L. 94-455, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-12 applicable to taxable years beginning after Dec. 31, 1974, see section 209(b) of Pub. L. 94-12, as amended, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1969 AMENDMENTS

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

Amendment by Pub. L. 91-53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91-53, set out as an Effective Date note under section 6157 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable to taxable years beginning on or after July 1, 1965, see section

809(f) of Pub. L. 89-44, set out as a note under section 6420 of this title.

§ 6202. Establishment by regulations of mode or time of assessment

If the mode or time for the assessment of any internal revenue tax (including interest, additional amounts, additions to the tax, and assessable penalties) is not otherwise provided for, the Secretary may establish the same by regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 768; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

§ 6203. Method of assessment

The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.

(Aug. 16, 1954, ch. 736, 68A Stat. 768; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

§ 6204. Supplemental assessments

(a) General rule

The Secretary may, at any time within the period prescribed for assessment, make a supplemental assessment whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(b) Restrictions on assessment

For restrictions on assessment of deficiencies in income, estate, gift, and certain excise taxes, see section 6213.

(Aug. 16, 1954, ch. 736, 68A Stat. 768; Pub. L. 93-406, title II, §1016(a)(27), Sept. 2, 1974, 88 Stat. 932; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1974—Subsec. (b). Pub. L. 93-406 substituted “gift, and certain excise taxes” for “and gift taxes”.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

§ 6205. Special rules applicable to certain employment taxes

(a) Adjustment of tax

(1) General rule

If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is

paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

(2) United States as employer

For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) Guam or American Samoa as employer

For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) District of Columbia as employer

For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125 shall be deemed a separate employer.

(5) States and political subdivisions as employer

For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) Underpayments

If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary may by regulations prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 768; Pub. L. 86-778, title I, §103(r)(1), Sept. 13, 1960, 74 Stat. 940; Pub. L. 89-97, title III, §317(d), July 30, 1965, 79 Stat. 389; Pub. L. 94-455, title XIX, §1906(a)(13), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1825, 1834; Pub. L. 99-272, title XIII, §13205(a)(2)(D), Apr. 7, 1986, 100 Stat. 315.)

AMENDMENTS

1986—Subsec. (a)(5). Pub. L. 99-272 added par. (5).

1976—Subsec. (a)(1). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (a)(4). Pub. L. 94-455, §1906(a)(13), substituted “Mayor of the District of Columbia and each agent designated by him” for “Commissioners of the District of Columbia and each agent designated by them” after “owned thereby, the”.

Subsec. (b). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1965—Subsec. (a)(4). Pub. L. 89-97 added par. (4).

1960—Subsec. (a)(3). Pub. L. 86-778 added par. (3).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99-272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-97 applicable with respect to services performed after quarter ending Sept. 30, 1965, and after quarter in which Secretary of the Treasury receives a certification from Commissioners of District of Columbia expressing their desire to have insurance system established by sections 401 et seq. and 1395c et seq. of Title 42, The Public Health and Welfare, extended to officers and employees coming under provisions of such amendments, see section 317(g) of Pub. L. 89-97, set out as a note under section 410 of Title 42.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, The Public Health and Welfare, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of Title 42.

§ 6206. Special rules applicable to excessive claims under certain sections

Any portion of a refund made under section 6416(a)(4) and any portion of a payment made under section 6420, 6421, or 6427 which constitutes an excessive amount (as defined in section 6675(b)), and any civil penalty provided by section 6675, may be assessed and collected as if it were a tax imposed by section 4081 (with respect to refunds under section 6416(a)(4) and pay-

ments under sections 6420 and 6421), or 4041 or 4081 (with respect to payments under section 6427) and as if the person who made the claim were liable for such tax. The period for assessing any such portion, and for assessing any such penalty, shall be 3 years from the last day prescribed for the filing of the claim under section 6416(a)(4), 6420, 6421, or 6427, as the case may be.

(Added Apr. 2, 1956, ch. 160, §4(b)(1), 70 Stat. 90; amended June 29, 1956, ch. 462, title II, §208(d)(1), 70 Stat. 396; Pub. L. 89-44, title II, §202(c)(2)(A), June 21, 1965, 79 Stat. 139; Pub. L. 91-258, title II, §207(d)(3), May 21, 1970, 84 Stat. 248; Pub. L. 97-424, title V, §515(b)(3)(A), Jan. 6, 1983, 96 Stat. 2181; Pub. L. 100-203, title X, §10502(d)(5), Dec. 22, 1987, 101 Stat. 1330-444; Pub. L. 103-66, title XIII, §13242(d)(14), Aug. 10, 1993, 107 Stat. 524; Pub. L. 108-357, title VIII, §853(d)(2)(F), Oct. 22, 2004, 118 Stat. 1613; Pub. L. 109-59, title XI, §11163(d)(1), Aug. 10, 2005, 119 Stat. 1974.)

PRIOR PROVISIONS

A prior section 6206 was renumbered 6207 of this title.

AMENDMENTS

2005—Pub. L. 109-59 substituted “certain sections” for “sections 6420, 6421, and 6427” in section catchline, in first sentence substituted “Any portion of a refund made under section 6416(a)(4) and any portion” for “Any portion” and “refunds under section 6416(a)(4) and payments under sections 6420” for “payments under sections 6420”, and in second sentence substituted “section 6416(a)(4), 6420” for “section 6420”.

2004—Pub. L. 108-357 substituted “or 4081” for “, 4081, or 4091”.

1993—Pub. L. 103-66 substituted “4041, 4081, or 4091” for “4041 or 4091”.

1987—Pub. L. 100-203 substituted “or 4041 or 4091” for “or 4041”.

1983—Pub. L. 97-424 struck out reference to section 6424 in section catchline, and in text struck out “4091 (with respect to payments under section 6424),” after “6421),”, and “6424,” wherever appearing.

1970—Pub. L. 91-258 inserted reference to section 6427 in section catchline, inserted reference to section 6427 in first and second sentences, and substituted “by section 4081 (with respect to payments under sections 6420 and 6421), 4091 (with respect to payments under section 6424), or 4041 (with respect to payments under section 6427)” for “by section 4081 (or, in the case of lubricating oil, by section 4091)”, in first sentence, respectively.

1965—Pub. L. 89-44 struck out “6420 and 6421” wherever appearing in section catchline and text and substituted therefor “6420, 6421, and 6424” and inserted “(or, in the case of lubricating oil, by section 4091)” after “4081” in text.

1956—Act June 29, 1956, inserted reference to excessive claims under section 6421 in section catchline and text.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-59 applicable to sales after Dec. 31, 2005, see section 11163(e) of Pub. L. 109-59, set out as a note under section 4101 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108-357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103-66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100-203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 effective Jan. 1, 1966, see section 701(a)(1), (2) of Pub. L. 89-44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§ 6207. Cross references

(1) For prohibition of suits to restrain assessment of any tax, see section 7421.

(2) For prohibition of assessment of taxes against insolvent banks, see section 7507.

(3) For assessment where property subject to tax has been sold in a distraint proceeding without the tax having been assessed prior to such sale, see section 6342.

(4) For assessment with respect to taxes required to be paid by chapter 52, see section 5703.

(5) For assessment in case of distilled spirits removed from place where distilled and not deposited in bonded warehouse, see section 5006(c).

(6) For period of limitation upon assessment, see chapter 66.

(Aug. 16, 1954, ch. 736, 68A Stat. 769, §6206; renumbered §6207, Apr. 2, 1956, ch. 160, §4(b)(1), 70 Stat. 90; amended Pub. L. 85-859, title II, §204(2), (3), Sept. 2, 1958, 72 Stat. 1428; Pub. L. 94-455, title XIX, §1906(a)(14), Oct. 4, 1976, 90 Stat. 1825.)

AMENDMENTS

1976—Par. (7). Pub. L. 94-455 struck out par. (7) relating to cross reference for assessment under the provisions of the Tariff Act of 1930.

1958—Par. (4). Pub. L. 85-859, §204(2), substituted “with respect to taxes required to be paid by chapter 52, see section 5703” for “in case of sale or removal of tobacco, snuff, cigars, and cigarettes without the use of the proper stamps, see section 5703(d)”.

Pars. (6) to (9). Pub. L. 85-859, §204(3), redesignated pars. (8) and (9) as (6) and (7), respectively, and struck out former pars. (6) and (7) which contained cross references relating to assessments in case of certain spirits subject to excessive leakage and to assessment of deficiencies in production of distilled spirits.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as an Effective Date note under section 5001 of this title.

Subchapter B—Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

Sec.

6211. Definition of a deficiency.
6212. Notice of deficiency.

Sec.

6213. Restrictions applicable to deficiencies; petition to Tax Court.
6214. Determinations by Tax Court.
6215. Assessment of deficiency found by Tax Court.
6216. Cross references.

AMENDMENTS

1969—Pub. L. 91-172, title I, §101(j)(62), Dec. 30, 1969, 83 Stat. 532, inserted reference to certain excise taxes in subchapter heading.

§ 6211. Definition of a deficiency

(a) In general

For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44 the term “deficiency” means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 exceeds the excess of—

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in subsection (b)(2), made.

(b) Rules for application of subsection (a)

For purposes of this section—

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, without regard to the credit under section 33, and without regard to any credits resulting from the collection of amounts assessed under section 6851 or 6852 (relating to termination assessments).

(2) The term “rebate” means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitle A or B or chapter 41, 42, 43, or 44 was less than the excess of the amount specified in subsection (a)(1) over the rebates previously made.

(3) The computation by the Secretary, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

(4) For purposes of subsection (a)—

(A) any excess of the sum of the credits allowable under sections 24(d), 32, and 34 over the tax imposed by subtitle A (determined without regard to such credits), and

(B) any excess of the sum of such credits as shown by the taxpayer on his return over the amount shown as the tax by the taxpayer on such return (determined without regard to such credits),

shall be taken into account as negative amounts of tax.

(c) Coordination with subchapters C and D

In determining the amount of any deficiency for purposes of this subchapter, adjustments to

partnership items shall be made only as provided in subchapters C and D.

(Aug. 16, 1954, ch. 736, 68A Stat. 770; Pub. L. 89-44, title VIII, §809(d)(5)(A), June 21, 1965, 79 Stat. 168; Pub. L. 89-368, title I, §102(b)(4), Mar. 15, 1966, 80 Stat. 64; Pub. L. 91-172, title I, §101(f)(1), (j)(39), Dec. 30, 1969, 83 Stat. 524, 530; Pub. L. 93-406, title II, §1016(a)(9), Sept. 2, 1974, 88 Stat. 929; Pub. L. 94-455, title XII, §1204(c)(4), title XIII, §1307(d)(2)(E), (F)(i), title XVI, §1605(b)(4), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1698, 1728, 1754, 1834; Pub. L. 96-223, title I, §101(f)(1)(A), (B), (2), (3), Apr. 2, 1980, 94 Stat. 252; Pub. L. 98-369, div. A, title IV, §474(r)(33), July 18, 1984, 98 Stat. 845; Pub. L. 100-203, title X, §10713(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330-470; Pub. L. 100-418, title I, §1941(b)(2)(B)(i), (ii), (C), (D), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100-647, title I, §1015(r)(2), Nov. 10, 1988, 102 Stat. 3572; Pub. L. 105-34, title XII, §1231(b), Aug. 5, 1997, 111 Stat. 1023; Pub. L. 105-206, title VI, §6012(f), July 22, 1998, 112 Stat. 819; Pub. L. 106-554, §1(a)(7) [title III, §314(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-643.)

AMENDMENTS

2000—Subsec. (b)(4)(A). Pub. L. 106-554 substituted “sections 24(d), 32, and 34” for “sections 32 and 34”.

1998—Subsec. (c). Pub. L. 105-206 substituted “subchapters C and D” for “subchapter C” in heading and in text.

1997—Subsec. (c). Pub. L. 105-34 added subsec. (c).

1988—Subsec. (a). Pub. L. 100-418, §1941(b)(2)(B)(i), (C), in introductory provisions, substituted “and 44” for “44, and 45” and “or 44” for “44, or 45”.

Subsec. (b)(2). Pub. L. 100-418, §1941(b)(2)(B)(ii), substituted “or 44” for “44, or 45”.

Subsec. (b)(4). Pub. L. 100-647, §1015(r)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to the credit under section 34, unless, without regard to such credit, the tax imposed by subtitle A exceeds the excess of the amount specified in subsection (a)(1) over the amount specified in subsection (a)(2).”

Subsec. (b)(5), (6). Pub. L. 100-418, §1941(b)(2)(D), struck out pars. (5) and (6) which read as follows:

“(5) The amount withheld under section 4995(a) from amounts payable to any producer for crude oil removed during any taxable period (as defined in section 4996(b)(7)) which is not otherwise shown on a return by such producer shall be treated as tax shown by the producer on a return for the taxable period.

“(6) Any liability to pay amounts required to be withheld under section 4995(a) shall not be treated as a tax imposed by chapter 45.”

1987—Subsec. (b)(1). Pub. L. 100-203 inserted reference to section 6852.

1984—Subsec. (b)(1). Pub. L. 98-369, §474(r)(33)(A), substituted “without regard to the credit under section 33” for “without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451”.

Subsec. (b)(4). Pub. L. 98-369, §474(r)(33)(B), substituted “section 34” for “section 39”.

1980—Subsec. (a). Pub. L. 96-223, §101(f)(1)(A), (2), inserted references to chapter 45 in provisions preceding par. (1).

Subsec. (b)(2). Pub. L. 96-223, §101(f)(1)(B), inserted reference to chapter 45.

Subsec. (b)(5), (6). Pub. L. 96-223, §101(f)(3), added pars. (5) and (6).

1976—Subsec. (a). Pub. L. 94-455, §§1307(d)(2)(E), (F)(i), 1605(b)(4)(A), (B), substituted “chapters 41, 42, 43, and 44” for “chapters 42 and 43” after “taxes imposed by” and “chapter 41, 42, 43, or 44” for “chapter 42 or 43” after “A or B, or”.

Subsec. (b)(1). Pub. L. 94-455, §1204(c)(4), struck out “and” after “31” and inserted “, and without regard to any credits resulting from the collection of amounts assessed under section 6851 (relating to termination assessments)” after “section 1451”.

Subsec. (b)(2). Pub. L. 94-455, §§1307(d)(2)(F)(i), 1605(b)(4)(C), substituted “chapter 41, 42, 43, or 44” for “chapter 42 or 43” after “A or B or”.

Subsec. (b)(3). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1974—Subsec. (a). Pub. L. 93-406, §1016(a)(9)(A), inserted reference in introductory provisions to taxes imposed by chapter 43.

Subsec. (b)(2). Pub. L. 93-406, §1016(a)(9)(B), inserted reference to taxes imposed by chapter 43.

1969—Subsec. (a). Pub. L. 91-172, §101(f)(1), inserted references to excise taxes and chapter 42.

Subsec. (b)(2). Pub. L. 91-172, §101(j)(39), inserted reference to chapter 42.

1966—Subsec. (b)(1). Pub. L. 89-368 substituted “subtitle A” for “chapter 1”.

1965—Subsec. (b)(4). Pub. L. 89-44 added par. (4).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106-554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1231(d) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting section 6234 of this title and amending this section] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-647 applicable to notices of deficiencies mailed after Nov. 10, 1988, see section 1015(r)(4) of Pub. L. 100-647, set out as a note under section 6201 of this title.

Amendment by Pub. L. 100-418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100-418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96-223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1204(c)(4) of Pub. L. 94-455 applicable to action taken under section 6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94-455, as amended, set out as a note under section 6851 of this title.

Amendment by section 1307(d)(2)(E), (F)(i) of Pub. L. 94-455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94-455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(4) of Pub. L. 94-455, see section 1608(d)(1) of Pub. L. 94-455, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-368 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 102(d) of Pub. L. 89-368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89-44, set out as a note under section 6420 of this title.

§ 6212. Notice of deficiency**(a) In general**

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) Address for notice of deficiency**(1) Income and gift taxes and certain excise taxes**

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, chapter 44, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) Joint income tax return

In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) Estate tax

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his

last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) Further deficiency letters restricted**(1) General rule**

If the Secretary has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, of estate tax in respect of the taxable estate of the same decedent, of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year, of section 4940 tax for the same taxable year, or of chapter 42 tax, (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical or clerical errors), in section 6851 or 6852 (relating to termination assessments), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) Cross references

For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of—

(A) Deficiency attributable to change of treatment with respect to itemized deductions, see section 63(e)(3).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033(a)(2)(C) and (D).

(C) Deficiency attributable to activities not engaged in for profit, see section 183(e)(4).

For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11 of the United States Code.

(d) Authority to rescind notice of deficiency with taxpayer's consent

The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. Any notice so rescinded shall not be treated as a notice of deficiency for purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213(a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512(a) (relating to limitations in case of petition to Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

(Aug. 16, 1954, ch. 736, 68A Stat. 770; Pub. L. 85-866, title I, §§76, 89(b), Sept. 2, 1958, 72 Stat. 1661, 1665; Pub. L. 88-272, title I, §112(d)(1), Feb. 26, 1964, 78 Stat. 24; Pub. L. 91-172, title I, §101(f)(2), (j)(40), (41), Dec. 30, 1969, 83 Stat. 524, 530; Pub. L. 91-614, title I, §102(d)(5), Dec. 31, 1970, 84 Stat. 1842; Pub. L. 93-406, title II, §1016(a)(10), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94-455, title II, §214(b), title XII, §§1204(c)(5), 1206(c)(3), title XIII, §1307(d)(2)(F)(ii), (G), title

XVI, §1605(b)(5), title XIX, §§1901(b)(31)(C), (37)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1549, 1698, 1704, 1728, 1754, 1800, 1803, 1834; Pub. L. 95-30, title I, §101(d)(15), May 23, 1977, 91 Stat. 134; Pub. L. 95-600, title IV, §405(c)(5), title VII, §701(t)(3)(C), Nov. 6, 1978, 92 Stat. 2871, 2912; Pub. L. 96-223, title I, §101(f)(1)(C), (4), (5), Apr. 2, 1980, 94 Stat. 252, 253; Pub. L. 96-589, §6(d)(2), Dec. 24, 1980, 94 Stat. 3408; Pub. L. 97-34, title IV, §442(d)(4), Aug. 13, 1981, 95 Stat. 323; Pub. L. 99-514, title I, §104(b)(17), title XV, §1562(a), Oct. 22, 1986, 100 Stat. 2106, 2761; Pub. L. 100-203, title X, §10713(b)(2)(C), Dec. 22, 1987, 101 Stat. 1330-470; Pub. L. 100-418, title I, §1941(b)(2)(B)(iii), (E), (F), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100-647, title I, §1015(m), Nov. 10, 1988, 102 Stat. 3572; Pub. L. 105-34, title III, §312(d)(12), Aug. 5, 1997, 111 Stat. 840; Pub. L. 105-206, title I, §1102(b), July 22, 1998, 112 Stat. 703.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-206 inserted at end “Such notice shall include a notice to the taxpayer of the taxpayer’s right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.”

1997—Subsec. (c)(2)(C) to (E). Pub. L. 105-34, which directed the amendment of par. (2) by striking out subpar. (C) and redesignating succeeding subpars. accordingly, was executed by redesignating subpar. (E) as (C) and striking out former subpar. (C). Prior to amendment, subpar. (C) read as follows: “Deficiency attributable to gain on sale or exchange of principal residence, see section 1034(j).” Former subpar. (D) was repealed previously.

1988—Subsec. (a). Pub. L. 100-418, §1941(b)(2)(B)(iii), substituted “or 44” for “44, or 45”.

Subsec. (b)(1). Pub. L. 100-418, §1941(b)(2)(E), substituted “or chapter 44” for “chapter 44, or chapter 45” and “chapter 44, and this chapter” for “chapter 44, chapter 45, and this chapter”.

Subsec. (c)(1). Pub. L. 100-418, §1941(b)(2)(F), substituted “or of chapter 42 tax” for “of chapter 42 tax” and struck out “, or of chapter 45 tax for the same taxable period” after “such petition relates”.

Subsec. (d). Pub. L. 100-647 inserted sentence at end that nothing in this subsection shall affect suspension of running of period of limitations during period during which rescinded notice was outstanding.

1987—Subsec. (c)(1). Pub. L. 100-203 inserted reference to section 6852.

1986—Subsec. (c)(2)(A). Pub. L. 99-514, §104(b)(17), amended subpar. (A) generally, substituting “, see section 63(e)(3)” for “and zero bracket amount, see section 63(g)(5)”.

Subsec. (d). Pub. L. 99-514, §1562(a), added subsec. (d). 1981—Subsec. (c)(1). Pub. L. 97-34 substituted “calendar year” for “calendar quarter”.

1980—Subsec. (a). Pub. L. 96-223, §101(f)(1)(C), inserted reference to chapter 45.

Subsec. (b)(1). Pub. L. 96-223, §101(f)(4), substituted “and certain excise taxes” for “taxes imposed by chapter 42” in section catchline and inserted references to chapter 45 in two places in text.

Subsec. (c)(1). Pub. L. 96-223, §101(f)(5), substituted “of chapter 42 tax” for “or of chapter 42 tax” and inserted “, or of chapter 45 tax for the same taxable period” after “to which such petition relates”.

Subsec. (c)(2). Pub. L. 96-589 inserted cross reference to section 505(a) of title 11 for provisions allowing determination of tax in title 11 cases.

1978—Subsec. (c)(1). Pub. L. 95-600, §701(t)(3)(C), substituted “same taxable year” for “same taxable years” in two places.

Subsec. (c)(2)(C). Pub. L. 95-600, §405(c)(5), substituted “principal residence” for “personal residence”.

1977—Subsec. (c)(2)(A). Pub. L. 95-30 substituted “change of treatment with respect to itemized deduc-

tions and zero bracket amount, see section 63(g)(5)” for “change of election with respect to the standard deduction where taxpayer and his spouse made separate returns, see section 144(b)”.

1976—Subsec. (a). Pub. L. 94-455, §§1307(d)(2)(F)(ii), 1605(b)(5)(A), 1906(b)(13)(A), struck out “or his delegate” after “Secretary”, and substituted “chapter 41, 42, 43, or 44” for “chapter 42 or 43”.

Subsec. (b)(1). Pub. L. 94-455, §§1307(d)(2)(G)(i), 1605(b)(5)(B), (C), 1906(b)(13)(A), struck out “or his delegate” after “Secretary”, and substituted “chapter 41, chapter 42, chapter 43, or chapter 44” for “chapter 42, or chapter 43”, and “chapter 41, chapter 42, chapter 43, chapter 44, and this chapter” for “chapter 42, chapter 43, and this chapter”.

Subsec. (c)(1). Pub. L. 94-455, §§1204(c)(5), 1206(c)(3), 1307(d)(2)(G)(ii), 1605(b)(5)(D), 1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing, substituted “of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable years, of chapter 44 tax for the same taxable years” for “of chapter 43 tax for the same taxable years”, and “(relating to mathematical or clerical errors), in section 6851 (relating to termination assessments)” for “(relating to mathematical errors)”.

Subsec. (c)(2)(B). Pub. L. 94-455, §1901(b)(31)(C), substituted “1033(a)(2)(C) and (D)” for “1033(a)(3)(C) and (D)”.

Subsec. (c)(2)(D). Pub. L. 94-455, §1901(b)(37)(C), struck out subsec. (c)(2)(D) which set forth a cross reference to section 1335 of this title relating to a deficiency attributable to war loss recoveries where prior benefit rule is elected.

Subsec. (c)(2)(E). Pub. L. 94-455, §214(b), added subpar. (E).

1974—Subsec. (a). Pub. L. 93-406, §1016(a)(10)(A), inserted reference to taxes imposed by chapter 43.

Subsec. (b)(1). Pub. L. 93-406, §1016(a)(10)(B), (C), inserted reference to chapter 43 in two places.

Subsec. (c)(1). Pub. L. 93-406, §1016(a)(10)(D), substituted “of the same decedent, of chapter 43 tax for the same taxable years,” for “of the same decedent,”.

1970—Subsec. (c)(1). Pub. L. 91-614 substituted “calendar quarter” for “calendar year”.

1969—Subsec. (a). Pub. L. 91-172, §101(j)(40), inserted reference to chapter 42.

Subsec. (b)(1). Pub. L. 91-172, §101(j)(41), inserted reference to chapter 42 taxes in heading and text.

Subsec. (c)(1). Pub. L. 91-172, §101(f)(2), included section 4940 tax and chapter 42 tax (other than under section 4940), among the classes of taxes with respect to which the Secretary cannot determine additional deficiencies after the taxpayer has filed a petition for redetermination of any deficiency about which he has been notified.

1964—Subsec. (c)(2)(A). Pub. L. 88-272 substituted “with respect to the” for “to take”.

1958—Subsec. (a). Pub. L. 85-866, §89(b), inserted “certified mail or” before “registered mail”.

Subsec. (b)(1). Pub. L. 85-866, §76, substituted “sub-title A or chapter 12” for “chapter 1 or 12” and “sub-title A, chapter 12,” for “such chapter”.

Subsec. (b)(2). Pub. L. 85-866, §89(b), inserted “certified mail or” before “registered mail”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by Pub. L. 100-418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see

section 1941(c) of Pub. L. 100-418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(17) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Section 1562(b) of Pub. L. 99-514 provided that: “The amendment made by this section [amending this section] shall apply to notices of deficiency issued on or after January 1, 1986.”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-589 effective Oct. 1, 1979, but not applicable to proceedings under title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96-223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 405(c)(5) of Pub. L. 95-600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95-600, set out as a note under section 1038 of this title.

Amendment by section 701(t)(3)(C) of Pub. L. 95-600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95-600, set out as a note under section 859 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 214(b) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1969, except that such amendments shall not apply to any taxable year ending before Oct. 4, 1976 with respect to which the period for assessing a deficiency has expired before Oct. 4, 1976, see section 214(c) of Pub. L. 94-455, set out as a note under section 183 of this title.

Amendment by section 1204(c)(5) of Pub. L. 94-455 applicable with respect to action taken under section 6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94-455, as amended, set out as a note under section 6851 of this title.

Amendment by section 1206(c)(3) of Pub. L. 94-455 applicable to returns filed after Dec. 31, 1976, see section 1206(d) of Pub. L. 94-455, set out as a note under section 6213 of this title.

Amendment by section 1307(d)(2)(F)(ii), (G) of Pub. L. 94-455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94-455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(5) of Pub. L. 94-455, see section 1608(d) of Pub. L. 94-455, set out as a note under section 856 of this title.

Amendment by section 1901(b)(31)(C), (37)(C) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub.

L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88-272, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 76 of Pub. L. 85-866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85-866, set out as a note under section 165 of this title.

Amendment by section 89(b) of Pub. L. 85-866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85-866, set out as a note under section 7502 of this title.

NOTICE OF DEFICIENCY TO SPECIFY DEADLINES FOR FILING TAX COURT PETITION

Pub. L. 105-206, title III, §3463(a), July 22, 1998, 112 Stat. 767, provided that: “The Secretary of the Treasury or the Secretary’s delegate shall include on each notice of deficiency under section 6212 of the Internal Revenue Code of 1986 the date determined by such Secretary (or delegate) as the last day on which the taxpayer may file a petition with the Tax Court.”

[Section 3463(a) of Pub. L. 105-206, set out above, applicable to notices mailed after Dec. 31, 1998, see section 3463(c) of Pub. L. 105-206, set out as an Effective Date of 1998 Amendment note under section 6213 of this title.]

EXPLANATIONS OF APPEALS AND COLLECTION PROCESS

Pub. L. 105-206, title III, §3504, July 22, 1998, 112 Stat. 771, provided that: “The Secretary of the Treasury or the Secretary’s delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act [July 22, 1998], include with any first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals an explanation of the entire process from examination through collection with respect to such proposed deficiency, including the assistance available to the taxpayer from the National Taxpayer Advocate at various points in the process.”

§ 6213. Restrictions applicable to deficiencies; petition to Tax Court

(a) Time for filing petition and restriction on assessment

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a

deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

(b) Exceptions to restrictions on assessment

(1) Assessments arising out of mathematical or clerical errors

If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical or clerical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212(c)(1) (restricting further deficiency letters), or of section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section. Each notice under this paragraph shall set forth the error alleged and an explanation thereof.

(2) Abatement of assessment of mathematical or clerical errors

(A) Request for abatement

Notwithstanding section 6404(b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) Stay of collection

In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

(3) Assessments arising out of tentative carry-back or refund adjustments

If the Secretary determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback or the amount described in section 1341(b)(1) with respect to which such amount was applied, credited, or refunded, he may assess without regard to the provisions of paragraph (2) the amount of the excess as a deficiency as if it were due to a mathematical or clerical error appearing on the return.

(4) Assessment of amount paid

Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(c) Failure to file petition

If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary.

(d) Waiver of restrictions

The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) Suspension of filing period for certain excise taxes

The running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to investments which jeopardize charitable purpose), 4945 (relating to taxes on taxable expenditures), 4951 (relating to taxes on self-dealing), or 4952 (relating to taxes on taxable expenditures), 4955 (relating to taxes on political expenditures), 4958 (relating to private excess benefit), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions) shall be suspended for any period during which the Secretary has extended the time allowed for making correction under section 4963(e).

(f) Coordination with title 11**(1) Suspension of running of period for filing petition in title 11 cases**

In any case under title 11 of the United States Code, the running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to any deficiency shall be suspended for the period during which the debtor is prohibited by reason of such case from filing a petition in the Tax Court with respect to such deficiency, and for 60 days thereafter.

(2) Certain action not taken into account

For purposes of the second and third sentences of subsection (a), the filing of a proof of claim or request for payment (or the taking of any other action) in a case under title 11 of the United States Code shall not be treated as action prohibited by such second sentence.

(g) Definitions

For purposes of this section—

(1) Return

The term “return” includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

(2) Mathematical or clerical error

The term “mathematical or clerical error” means—

(A) an error in addition, subtraction, multiplication, or division shown on any return,

(B) an incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,

(C) an entry on a return of an item which is inconsistent with another entry of the same or another item on such return,

(D) an omission of information which is required to be supplied on the return to substantiate an entry on the return,

(E) an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed—

- (i) as a specified monetary amount, or
- (ii) as a percentage, ratio, or fraction,

and if the items entering into the application of such limit appear on such return.

(F) an omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return,

(G) an entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32(c)(2)(A) to the extent the tax imposed by section 1401 (relating to self-employment tax) on such net earnings has not been paid,

(H) an omission of a correct TIN required under section 21 (relating to expenses for household and dependent care services necessary for gainful employment) or section 151 (relating to allowance of deductions for personal exemptions),

(I) an omission of a correct TIN required under section 24(e) (relating to child tax credit) to be included on a return,

(J) an omission of a correct TIN required under section 25A(g)(1) (relating to higher education tuition and related expenses) to be included on a return,

(K) an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit),

(L) the inclusion on a return of a TIN required to be included on the return under section 21, 24, or 32 if—

(i) such TIN is of an individual whose age affects the amount of the credit under such section, and

(ii) the computation of the credit on the return reflects the treatment of such individual as being of an age different from the individual's age based on such TIN, and

(M) the entry on the return claiming the credit under section 32 with respect to a child if, according to the Federal Case Registry of Child Support Orders established under section 453(h) of the Social Security Act, the taxpayer is a noncustodial parent of such child.

A taxpayer shall be treated as having omitted a correct TIN for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.

(h) Cross references

(1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201(a)(3).

(2) For assessments without regard to restrictions imposed by this section in the case of—

(A) Recovery of foreign income taxes, see section 905(c).

(B) Recovery of foreign estate tax, see section 2016.

(3) For provisions relating to application of this subchapter in the case of certain partnership items, etc., see section 6230(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 771; Pub. L. 89-44, title VIII, §809(d)(4)(B), June 21, 1965, 79 Stat. 168; Pub. L. 91-172, title I, §101(f)(3), (j)(42), Dec. 30, 1969, 83 Stat. 524, 530; Pub. L. 93-406, title II, §1016(a)(11), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94-455, title XII, §§1204(c)(6), 1206(a)-(c)(1), title XIII, §1307(d)(2)(F)(iii), title XVI, §1605(b)(6), title XIX, §§1906(a)(15), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1698, 1703, 1704, 1728, 1755, 1825, 1834; Pub. L. 95-227, §4(d)(1), (2), Feb. 10, 1978, 92 Stat. 23; Pub. L. 95-600, title V, §504(b)(2), Nov. 6, 1978, 92 Stat. 2881; Pub. L. 96-223, title I, §101(f)(1)(D), (E), Apr. 2, 1980, 94 Stat. 252; Pub. L. 96-589, §6(b)(1), Dec. 24, 1980, 94 Stat. 3407; Pub. L. 96-596, §2(a)(4)(C), Dec. 24, 1980, 94 Stat. 3472; Pub. L. 97-248, title IV, §402(c)(2), Sept. 3, 1982, 96 Stat. 667; Pub. L. 98-369, title III, §305(b)(4), title IV, §474(r)(34), July 18, 1984, 98 Stat. 784, 845; Pub. L. 99-514, title XVIII, §1875(d)(2)(B)(i), Oct. 22, 1986, 100 Stat. 2896; Pub. L. 100-203, title X, §§10712(c)(1), 10713(b)(2)(D), Dec. 22, 1987, 101 Stat. 1330-467, 1330-470; Pub. L. 100-418, title I, §1941(b)(2)(B)(iv),

(v), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100-647, title I, § 1015(r)(3), title VI, § 6243(a), Nov. 10, 1988, 102 Stat. 3573, 3749; Pub. L. 101-239, title VII, § 7811(k)(1), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 104-168, title XIII, § 1311(c)(3), July 30, 1996, 110 Stat. 1478; Pub. L. 104-188, title I, § 1615(c), Aug. 20, 1996, 110 Stat. 1853; Pub. L. 104-193, title IV, § 451(c), Aug. 22, 1996, 110 Stat. 2277; Pub. L. 105-34, title I, § 101(d)(2), title II, § 201(b), title X, § 1085(a)(3), Aug. 5, 1997, 111 Stat. 799, 803, 956; Pub. L. 105-206, title III, §§ 3463(b), 3464(a), title VI, § 6010(p)(3), July 22, 1998, 112 Stat. 767, 817; Pub. L. 105-277, div. J, title III, § 3003(a), (b), Oct. 21, 1998, 112 Stat. 2681-905; Pub. L. 107-16, title III, § 303(g), June 7, 2001, 115 Stat. 56.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

Section 453(h) of the Social Security Act, referred to in subsec. (g)(2)(M), is classified to section 653(h) of Title 42, The Public Health and Welfare.

AMENDMENTS

2001—Subsec. (g)(2)(M). Pub. L. 107-16, §§ 303(g), 901, temporarily added subpar. (M). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (a). Pub. L. 105-206, § 3464(a), substituted “, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection.” for “, including the Tax Court.” and “to enjoin any action or proceeding or order any refund” for “to enjoin any action or proceeding”.

Pub. L. 105-206, § 3463(b), inserted at end “Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.”

Subsec. (g)(2). Pub. L. 105-277, § 3003(a), inserted concluding provisions.

Subsec. (g)(2)(K). Pub. L. 105-206, § 6010(p)(3), amended Pub. L. 105-34, § 1085(a)(3). See 1997 Amendment note below.

Subsec. (g)(2)(L). Pub. L. 105-277, § 3003(b), added subpar. (L).

1997—Subsec. (g)(2)(I). Pub. L. 105-34, § 101(d)(2), added subpar. (I).

Subsec. (g)(2)(J). Pub. L. 105-34, § 201(b), added subpar. (J).

Subsec. (g)(2)(K). Pub. L. 105-34, § 1085(a)(3), as amended by Pub. L. 105-206, § 6010(p)(3), added subpar. (K).

1996—Subsec. (e). Pub. L. 104-168 inserted “4958 (relating to private excess benefit),” before “4971”.

Subsec. (g)(2)(F), (G). Pub. L. 104-193 added subpars. (F) and (G).

Subsec. (g)(2)(H). Pub. L. 104-188 added subpar. (H).

1989—Subsec. (h)(3), (4). Pub. L. 101-239 made technical correction to directory language of Pub. L. 100-647, § 1015(r)(3), see 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100-647, § 6243(a), substituted for period at end “, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition.”

Pub. L. 100-418, § 1941(b)(2)(B)(iv), substituted “or 44” for “44, or 45”.

Subsec. (g)(1), (2)(E). Pub. L. 100-418, § 1941(b)(2)(B)(v), substituted “or 44” for “44, or 45”.

Subsec. (h)(3), (4). Pub. L. 100-647, § 1015(r)(3), as amended by Pub. L. 101-239, redesignated par. (4) as (3)

and struck out former par. (3) which read as follows: “For assessment as if a mathematical error on the return, in the case of erroneous claims for credits under section 32 or 34, see section 6201(a)(4).”

1987—Subsec. (a). Pub. L. 100-203, § 10713(b)(2)(D), inserted reference to section 6852.

Subsec. (e). Pub. L. 100-203, § 10712(c)(1), inserted “4955 (relating to taxes on political expenditures),”.

1986—Subsec. (h)(4). Pub. L. 99-514 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “For provision that this subchapter shall not apply in the case of computational adjustments attributable to partnership items, see section 6230(a).”

1984—Subsec. (e). Pub. L. 98-369, § 305(b)(4), substituted “section 4963(e)” for “section 4962(e)”.

Subsec. (h)(3). Pub. L. 98-369, § 474(r)(34), substituted “section 32 or 34” for “section 39”.

1982—Subsec. (h)(4). Pub. L. 97-248 added par. (4).

1980—Subsec. (a). Pub. L. 96-223, § 101(f)(1)(D), inserted reference to chapter 45.

Subsec. (e). Pub. L. 96-596 substituted “section 4962(e)” for “section 4941(e)(4), 4942(j)(2), 4943(d)(3), 4944(e)(3), 4945(i)(2), 4951(e)(4), 4952(e)(2), 4971(c)(3), or 4975(f)(6)”.

Subsec. (f). Pub. L. 96-589 added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1), (2)(E). Pub. L. 96-223, § 101(f)(1)(E), inserted reference to chapter 45.

Subsecs. (g), (h). Pub. L. 96-589 redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1978—Subsec. (b)(3). Pub. L. 95-600 inserted “or refund” after “carryback” in heading, and “or the amount described in section 1341(b)(1)” after “carryback” in text.

Subsec. (e). Pub. L. 95-227, § 4(d)(1), inserted provisions relating to sections 4951 and 4952 of this title, and substituted “4975(f)(6)” for “4975(f)(4)”.

Subsec. (f). Pub. L. 95-227, § 4(d)(2), inserted references to chapters 41 and 44.

1976—Subsec. (a). Pub. L. 94-455, §§ 1204(c)(6), 1307(d)(2)(F)(iii), 1605(b)(6), 1906(a)(15), inserted “section 6851 or” before “section 6861” and references to chapter 41 and chapter 44 and substituted “United States” for “States of the Union and the District of Columbia”.

Subsec. (b)(1). Pub. L. 94-455, § 1206(a)(2), substituted in heading “Assessments arising out of mathematical or clerical errors” for “Mathematical errors” and in text inserted “or clerical” after “mathematical” in two places and inserted provision that each notice under this paragraph shall set forth the error alleged and an explanation thereof.

Subsec. (b)(2). Pub. L. 94-455, § 1206(a)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 94-455, §§ 1206(a)(1), (c)(1), 1906(b)(13)(A), redesignated former par. (2) as (3), and as so redesignated, struck out “or his delegate” after “Secretary” and inserted “without regard to the provisions of paragraph (2)” after “he may assess” and “or clerical” after “mathematical”. Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 94-455, § 1206(a)(1), redesignated former par. (3) as (4).

Subsecs. (c) to (e). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsecs. (f), (g). Pub. L. 94-455, § 1206(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1974—Subsec. (a). Pub. L. 93-406, § 1016(a)(11)(A), inserted reference to tax imposed by chapter 43.

Subsec. (e). Pub. L. 93-406, § 1016(a)(11)(B)-(D), substituted “excise taxes” for “chapter 42 taxes” in heading, and in text substituted “4945 (relating to taxes on taxable expenditures), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise tax on prohibited transactions)” for “or 4945 (relating to taxes on taxable expenditures)” and “, 4945(i)(2), 4971(c)(3), or 4975(f)(4)” for “or 4945(h)(2)”.

1969—Subsec. (a). Pub. L. 91-172, § 101(j)(42), inserted reference to chapter 42.

Subsecs. (e), (f). Pub. L. 91-172, § 101(f)(3), added subsec. (e) and redesignated former subsec. (e) as (f).

1965—Subsec. (e)(3). Pub. L. 89-44 added par. (3).

EFFECTIVE AND TERMINATION DATES OF 2001
AMENDMENT

Amendment by Pub. L. 107-16 effective Jan. 1, 2004, see section 303(i) of Pub. L. 107-16, set out as a note under section 32 of this title.

Amendment by Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105-277, div. J, title III, §3003(c), Oct. 21, 1998, 112 Stat. 2681-905, provided that: “The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 21, 1998].”

Pub. L. 105-206, title III, §3463(c), July 22, 1998, 112 Stat. 767, provided that: “Subsection (a) and the amendment made by subsection (b) [amending this section and enacting provisions set out as a note under section 6212 of this title] shall apply to notices mailed after December 31, 1998.”

Pub. L. 105-206, title III, §3464(d), July 22, 1998, 112 Stat. 767, provided that: “The amendments made by this section [amending this section and section 6512 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998].”

Amendment by section 6010(p)(3) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 101(d)(2) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 101(e) of Pub. L. 105-34, set out as an Effective Date note under section 24 of this title.

Amendment by section 201(b) of Pub. L. 105-34 applicable to expenses paid after Dec. 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date, see section 201(f) of Pub. L. 105-34, set out as an Effective Date note under section 25A of this title.

Amendment by section 1085(a)(3) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1996, see section 1085(e)(1) of Pub. L. 105-34, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104-193 applicable with respect to returns the due date for which (without regard to extensions) is more than 30 days after Aug. 22, 1996, see section 451(d) of Pub. L. 104-193, set out as a note under section 32 of this title.

Amendment by Pub. L. 104-188 applicable with respect to returns the due date for which, without regard to extensions, is on or after the 30th day after Aug. 20, 1996, with special rule for 1995 and 1996, see section 1615(d) of Pub. L. 104-188, set out as a note under section 21 of this title.

Amendment by Pub. L. 104-168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995, and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104-168, set out as a note under section 4955 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988,

Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1015(r)(3) of Pub. L. 100-647 applicable to notices of deficiencies mailed after Nov. 10, 1988, see section 1015(r)(4) of Pub. L. 100-647, set out as a note under section 6201 of this title.

Section 6243(c) of Pub. L. 100-647 provided that: “The amendments made by this section [amending this section and section 7482 of this title] shall apply to orders entered after the date of the enactment of this Act [Nov. 10, 1988].”

Amendment by Pub. L. 100-418 applicable to crude oil removed from premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100-418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10712(c)(1) of Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective as if included in the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, see section 1875(d)(2)(C) of Pub. L. 99-514, set out as a note under section 6230 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 305(b)(4) of Pub. L. 98-369 applicable to taxable events occurring after Dec. 31, 1984, see section 305(c) of Pub. L. 98-369, set out as an Effective Date note under section 4962 of this title.

Amendment by section 474(r)(34) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96-589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96-223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-600 applicable to tentative refund claims filed on and after Nov. 6, 1978, see section 504(c) of Pub. L. 95-600, set out as a note under section 6411 of this title.

Amendment by Pub. L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date note under section 192 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1204(c)(6) of Pub. L. 94-455 applicable with respect to action taken under section

6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94-455, as amended, set out as a note under section 6851 of this title.

Section 1206(d) of Pub. L. 94-455, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 6201 and 6212 of this title] shall apply with respect to returns (within the meaning of section 6213(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) filed after December 31, 1976."

Amendment by section 1307(d)(2)(F)(iii) of Pub. L. 94-455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94-455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(6) of Pub. L. 94-455, see section 1608(d) of Pub. L. 94-455, set out as a note under section 856 of this title.

Amendment by section 1906(a)(15), (b)(13)(A) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89-44, set out as a note under section 6420 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 6214. Determinations by Tax Court

(a) Jurisdiction as to increase of deficiency, additional amounts, or additions to the tax

Except as provided by section 7463, the Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or any addition to the tax should be assessed, if claim therefor is asserted by the Secretary at or before the hearing or a rehearing.

(b) Jurisdiction over other years and quarters

The Tax Court in redetermining a deficiency of income tax for any taxable year or of gift tax for any calendar year or calendar quarter shall consider such facts with relation to the taxes for other years or calendar quarters as may be nec-

essary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year or calendar quarter has been overpaid or underpaid.

(c) Taxes imposed by section 507 or chapter 41, 42, 43, or 44

The Tax Court, in redetermining a deficiency of any tax imposed by section 507 or chapter 41, 42, 43, or 44 for any period, act, or failure to act, shall consider such facts with relation to the taxes under chapter 41, 42, 43, or 44 for other periods, acts, or failures to act as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the taxes under chapter 41, 42, 43, or 44 for any other period, act, or failure to act have been overpaid or underpaid. The Tax Court, in redetermining a deficiency of any second tier tax (as defined in section 4963(b)), shall make a determination with respect to whether the taxable event has been corrected.

(d) Final decisions of Tax Court

For purposes of this chapter, chapter 41, 42, 43, or 44, and subtitles A or B the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 7481.

(e) Cross reference

For provision giving Tax Court jurisdiction to order a refund of an overpayment and to award sanctions, see section 6512(b)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 773; Pub. L. 91-172, title I, § 101(j)(43), (44), title IX, § 960(a), Dec. 30, 1969, 83 Stat. 530, 531, 734; Pub. L. 91-614, title I, § 102(d)(6), Dec. 31, 1970, 84 Stat. 1842; Pub. L. 93-406, title II, § 1016(a)(12), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94-455, title XIII, § 1307(d)(2)(F)(iv), (H), title XVI, § 1605(b)(7), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1728, 1755, 1834; Pub. L. 96-223, title I, § 101(f)(1)(F), (G), Apr. 2, 1980, 94 Stat. 252; Pub. L. 96-596, § 2(b), Dec. 24, 1980, 94 Stat. 3472; Pub. L. 98-369, div. A, title I, § 144(b), July 18, 1984, 98 Stat. 683; Pub. L. 99-514, title XV, §§ 1511(c)(8), 1554(a), title XVIII, § 1833, Oct. 22, 1986, 100 Stat. 2745, 2754, 2852; Pub. L. 100-418, title I, § 1941(b)(2)(B)(vi), (vii), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100-647, title VI, § 6244(b)(1), Nov. 10, 1988, 102 Stat. 3750; Pub. L. 104-188, title I, § 1704(t)(16), Aug. 20, 1996, 110 Stat. 1888.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-188 amended subsec. (e) generally, striking par. (2) designation and par. (1) which provided cross reference to section 6621(c)(4) of this title for provision giving Tax Court jurisdiction to determine whether any portion of deficiency is a substantial underpayment attributable to tax motivated transactions.

1988—Subsec. (c). Pub. L. 100-418, § 1941(b)(2)(B)(vi), substituted "or 44" for "44, or 45" in heading and wherever appearing in text.

Subsec. (d). Pub. L. 100-418, § 1941(b)(2)(B)(vii), substituted "or 44" for "44, or 45".

Subsec. (e). Pub. L. 100-647 substituted "references" for "reference" in heading, designated existing provisions as par. (1), and added par. (2).

1986—Subsec. (a). Pub. L. 99-514, § 1554(a), substituted "any addition to the tax" for "addition to the tax".

Subsec. (c). Pub. L. 99-514, §1833, substituted “section 4963(b)” for “section 4962(b)”.

Subsec. (e). Pub. L. 99-514, §1511(c)(8), substituted “section 6621(c)(4)” for “section 6621(d)(4)”.

1984—Subsec. (e). Pub. L. 98-369 added subsec. (e).

1980—Subsec. (c). Pub. L. 96-596 inserted provision directing the Tax Court, in redetermining a deficiency of any second tier tax, to make a determination with respect to whether the taxable event has been corrected.

Pub. L. 96-223, §101(f)(1)(F), inserted reference to chapter 45.

Subsec. (d). Pub. L. 96-223, §101(f)(1)(G), inserted reference to chapter 45.

1976—Subsec. (a). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c). Pub. L. 94-455, §§1307(d)(2)(F)(iv), (H), 1605(b)(7)(A), (B), substituted in heading and in text “41, 42, 43, or 44” for “42 or 43”.

Subsec. (d). Pub. L. 94-455, §§1307(d)(2)(F)(iv), 1605(b)(7)(C), substituted “41, 42, 43, or 44” for “42 or 43”.

1974—Subsec. (c). Pub. L. 93-406, §1016(a)(12)(A), (B), inserted reference to chapter 43 in heading and in text.

Subsec. (d). Pub. L. 93-406, §1016(a)(12)(C), inserted reference to chapter 43.

1970—Subsec. (b). Pub. L. 91-614 inserted reference to calendar quarters in heading and in text in regard to gift tax deficiencies.

1969—Subsec. (a). Pub. L. 91-172, §960(a), inserted reference to exception provided for in section 7463 of this title.

Subsecs. (c), (d). Pub. L. 91-172, §101(j)(43), (44), added subsec. (c), redesignated former subsec. (c) as (d), and, in subsec. (d) as so redesignated, inserted reference to chapter 42.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 6244(c) of Pub. L. 100-647 provided that: “The amendments made by this section [amending this section and section 6512 of this title] shall apply to overpayments determined by the Tax Court which have not yet been refunded by the 90th day after the date of the enactment of this Act [Nov. 10, 1988].”

Amendment by Pub. L. 100-418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100-418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1511(c)(8) of Pub. L. 99-514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99-514, set out as a note under section 47 of this title.

Section 1554(b) of Pub. L. 99-514 provided that: “The amendment made by subsection (a) [amending this section] shall apply to any action or proceeding in the Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1954 [now 1986]) before the date of the enactment of this Act [Oct. 22, 1986].”

Amendment by section 1833 of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to interest accruing after Dec. 31, 1984, see section 144(c) of Pub. L. 98-369, set out as a note under section 6621 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96-223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1307(d)(2)(F)(iv), (H) of Pub. L. 94-455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94-455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(7) of Pub. L. 94-455, see section 1608(d) of Pub. L. 94-455, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(43), (44) of Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 960(a) of Pub. L. 91-172 effective one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91-172, set out as an Effective Date note under section 7463 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 6215. Assessment of deficiency found by Tax Court

(a) General rule

If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary. No part of the amount determined as a deficiency by the Secretary but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by levy or by proceeding in court with or without assessment.

(b) Cross references

(1) For assessment or collection of the amount of the deficiency determined by the Tax Court pending appellate court review, see section 7485.

(2) For dismissal of petition by Tax Court as affirmation of deficiency as determined by the Secretary, see section 7459(d).

(3) For decision of Tax Court that tax is barred by limitation as its decision that there is no deficiency, see section 7459(e).

(4) For assessment of damages awarded by Tax Court for instituting proceedings merely for delay, see section 6673.

(5) For treatment of certain deficiencies as having been paid, in connection with sale of surplus war-

built vessels, see section 9(b)(8) of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742).

(6) For rules applicable to Tax Court proceedings, see generally subchapter C of chapter 76.

(7) For extension of time for paying amount determined as deficiency, see section 6161(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 773; Pub. L. 94-455, title XIX, §1906(a)(16), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1825, 1834; Pub. L. 99-514, title XIV, §1404(c)(2), Oct. 22, 1986, 100 Stat. 2714.)

AMENDMENTS

1986—Subsec. (b)(7), (8). Pub. L. 99-514 redesignated par. (8) as (7) and struck out former par. (7) which read as follows: “For proration of deficiency to installments, see section 6152(c).”

1976—Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (b)(5). Pub. L. 94-455, §1906(a)(16), struck out “60 Stat. 48;” before “50 U.S.C. App. 1742”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1404(d) of Pub. L. 99-514, set out as a note under section 643 of this title.

§ 6216. Cross references

(1) For procedures relating to receivership proceedings, see subchapter B of chapter 70.

(2) For procedures relating to jeopardy assessments, see subchapter A of chapter 70.

(3) For procedures relating to claims against transferees and fiduciaries, see chapter 71.

(4) For procedure relating to partnership items, see subchapter C.

(Aug. 16, 1954, ch. 736, 68A Stat. 773; Pub. L. 96-589, §6(i)(9), Dec. 24, 1980, 94 Stat. 3411; Pub. L. 97-248, title IV, §402(c)(3), Sept. 3, 1982, 96 Stat. 667.)

AMENDMENTS

1982—Par. (4). Pub. L. 97-248 added par. (4).

1980—Par. (1). Pub. L. 96-589 struck out reference to bankruptcy proceedings.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

Subchapter C—Tax Treatment of Partnership Items

- | | |
|--|--|
| Sec.
6221.

6222.

6223.
6224. | Tax treatment determined at partnership level.
Partner's return must be consistent with partnership return or Secretary notified of inconsistency.
Notice to partners of proceedings.
Participation in administrative proceedings; waivers; agreements. |
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- | | |
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| Sec.
6225.

6226.

6227.
6228.

6229.
6230.
6231.
[6232].
6233.

6234. | Assessments made only after partnership level proceedings are completed.
Judicial review of final partnership administrative adjustments.
Administrative adjustment requests.
Judicial review where administrative adjustment request is not allowed in full.
Period of limitations for making assessments.
Additional administrative provisions.
Definitions and special rules.
[Repealed.]
Extension to entities filing partnership returns, etc.
Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return. |
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AMENDMENTS

1997—Pub. L. 105-34, title XII, §1231(c), Aug. 5, 1997, 111 Stat. 1023, added item 6234.

1988—Pub. L. 100-418, title I, §1941(b)(3)(D), Aug. 23, 1988, 102 Stat. 1324, struck out item 6232 “Extension of subchapter to windfall profit tax”.

1984—Pub. L. 98-369, div. A, title VII, §714(p)(2)(E), July 18, 1984, 98 Stat. 965, added item 6233.

1982—Pub. L. 97-248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 648, added subchapter C heading and items 6221 to 6232.

§ 6221. Tax treatment determined at partnership level

Except as otherwise provided in this subchapter, the tax treatment of any partnership item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item) shall be determined at the partnership level.

(Added Pub. L. 97-248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 648; amended Pub. L. 105-34, title XII, §1238(a), Aug. 5, 1997, 111 Stat. 1026.)

AMENDMENTS

1997—Pub. L. 105-34 inserted “(and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item)” after “item”.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1238(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and sections 6226 and 6230 of this title] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE

Section 407(a) of Pub. L. 97-248, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Except as provided in paragraph (2), the amendments made by sections 402, 403, and 404 [enacting this subchapter and section 1508 of Title 28, Judiciary and Judicial Procedure, amending sections 702, 6031, 6213, 6216, 6422, 6501, 6504, 6511, 6512, 6515, 7422, 7451, 7456, 7459, 7482, and 7485 of this title and section 1346 of Title 28, and enacting provisions set out as a note under section 6031 of this title] shall apply to partnership taxable years beginning after the date of the enactment of this Act [Sept. 3, 1982].

“(2) Section 6232 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to periods after December 31, 1982.

“(3) The amendments made by sections 402, 403, and 404 shall apply to any partnership taxable year (or in the case of section 6232 of such Code, to any period) ending after the date of the enactment of this Act [Sept. 3, 1982] if the partnership, each partner, and each indirect partner requests such application and the Sec-

retary of the Treasury or his delegate consents to such application.”

SHORT TITLE

For short title of title IV of Pub. L. 97-248 as the “Tax Treatment of Partnership Items Act of 1982”, see Short Title of 1982 Amendments note set out under section 1 of this title.

§ 6222. Partner’s return must be consistent with partnership return or Secretary notified of inconsistency

(a) In general

A partner shall, on the partner’s return, treat a partnership item in a manner which is consistent with the treatment of such partnership item on the partnership return.

(b) Notification of inconsistent treatment

(1) In general

In the case of any partnership item, if—

(A)(i) the partnership has filed a return but the partner’s treatment on his return is (or may be) inconsistent with the treatment of the item on the partnership return, or

(ii) the partnership has not filed a return, and

(B) the partner files with the Secretary a statement identifying the inconsistency,

subsection (a) shall not apply to such item.

(2) Partner receiving incorrect information

A partner shall be treated as having complied with subparagraph (B) of paragraph (1) with respect to a partnership item if the partner—

(A) demonstrates to the satisfaction of the Secretary that the treatment of the partnership item on the partner’s return is consistent with the treatment of the item on the schedule furnished to the partner by the partnership, and

(B) elects to have this paragraph apply with respect to that item.

(c) Effect of failure to notify

In any case—

(1) described in paragraph (1)(A)(i) of subsection (b), and

(2) in which the partner does not comply with paragraph (1)(B) of subsection (b),

section 6225 shall not apply to any part of a deficiency attributable to any computational adjustment required to make the treatment of the items by such partner consistent with the treatment of the items on the partnership return.

(d) Addition to tax for failure to comply with section

For addition to tax in the case of a partner’s disregard of requirements of this section, see part II of subchapter A of chapter 68.

(Added Pub. L. 97-248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 648; amended Pub. L. 99-514, title XV, §1503(c)(1), Oct. 22, 1986, 100 Stat. 2743; Pub. L. 101-239, title VII, §7721(c)(7), Dec. 19, 1989, 103 Stat. 2400.)

AMENDMENTS

1989—Subsec. (d). Pub. L. 101-239 substituted “part II of subchapter A of chapter 68” for “section 6653(a)”.

1986—Subsec. (d). Pub. L. 99-514 struck out “intentional or negligent” after “case of a partner’s”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101-239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1503(e) of Pub. L. 99-514, set out as a note under section 6653 of this title.

§ 6223. Notice to partners of proceedings

(a) Secretary must give partners notice of beginning and completion of administrative proceedings

The Secretary shall mail to each partner whose name and address is furnished to the Secretary notice of—

(1) the beginning of an administrative proceeding at the partnership level with respect to a partnership item, and

(2) the final partnership administrative adjustment resulting from any such proceeding.

A partner shall not be entitled to any notice under this subsection unless the Secretary has received (at least 30 days before it is mailed to the tax matters partner) sufficient information to enable the Secretary to determine that such partner is entitled to such notice and to provide such notice to such partner.

(b) Special rules for partnership with more than 100 partners

(1) Partner with less than 1 percent interest

Except as provided in paragraph (2), subsection (a) shall not apply to a partner if—

(A) the partnership has more than 100 partners, and

(B) the partner has a less than 1 percent interest in the profits of the partnership.

(2) Secretary must give notice to notice group

If a group of partners in the aggregate having a 5 percent or more interest in the profits of a partnership so request and designate one of their members to receive the notice, the member so designated shall be treated as a partner to whom subsection (a) applies.

(c) Information base for Secretary’s notices, etc.

For purposes of this subchapter—

(1) Information on partnership return

Except as provided in paragraphs (2) and (3), the Secretary shall use the names, addresses, and profits interests shown on the partnership return.

(2) Use of additional information

The Secretary shall use additional information furnished to him by the tax matters partner or any other person in accordance with regulations prescribed by the Secretary.

(3) Special rule with respect to indirect partners

If any information furnished to the Secretary under paragraph (1) or (2)—

(A) shows that a person has a profits interest in the partnership by reason of ownership of an interest through 1 or more pass-thru partners, and

(B) contains the name, address, and profits interest of such person,

then the Secretary shall use the name, address, and profits interest of such person with respect to such partnership interest (in lieu of the names, addresses, and profits interests of the pass-thru partners).

(d) Period for mailing notice

(1) Notice of beginning of proceedings

The Secretary shall mail the notice specified in paragraph (1) of subsection (a) to each partner entitled to such notice not later than the 120th day before the day on which the notice specified in paragraph (2) of subsection (a) is mailed to the tax matters partner.

(2) Notice of final partnership administrative adjustment

The Secretary shall mail the notice specified in paragraph (2) of subsection (a) to each partner entitled to such notice not later than the 60th day after the day on which the notice specified in such paragraph (2) was mailed to the tax matters partner.

(e) Effect of Secretary's failure to provide notice

(1) Application of subsection

(A) In general

This subsection applies where the Secretary has failed to mail any notice specified in subsection (a) to a partner entitled to such notice within the period specified in subsection (d).

(B) Special rules for partnerships with more than 100 partners

For purposes of subparagraph (A), any partner described in paragraph (1) of subsection (b) shall be treated as entitled to notice specified in subsection (a). The Secretary may provide such notice—

(i) except as provided in clause (ii), by mailing notice to the tax matters partner, or

(ii) in the case of a member of a notice group which qualified under paragraph (2) of subsection (b), by mailing notice to the partner designated for such purpose by the group.

(2) Proceedings finished

In any case to which this subsection applies, if at the time the Secretary mails the partner notice of the proceeding—

(A) the period within which a petition for review of a final partnership administrative adjustment under section 6226 may be filed has expired and no such petition has been filed, or

(B) the decision of a court in an action begun by such a petition has become final,

the partner may elect to have such adjustment, such decision, or a settlement agreement described in paragraph (2) of section 6224(c) with respect to the partnership taxable year to which the adjustment relates apply to

such partner. If the partner does not make an election under the preceding sentence, the partnership items of the partner for the partnership taxable year to which the proceeding relates shall be treated as nonpartnership items.

(3) Proceedings still going on

In any case to which this subsection applies, if paragraph (2) does not apply, the partner shall be a party to the proceeding unless such partner elects—

(A) to have a settlement agreement described in paragraph (2) of section 6224(c) with respect to the partnership taxable year to which the proceeding relates apply to the partner, or

(B) to have the partnership items of the partner for the partnership taxable year to which the proceeding relates treated as nonpartnership items.

(f) Only one notice of final partnership administrative adjustment

If the Secretary mails a notice of final partnership administrative adjustment for a partnership taxable year with respect to a partner, the Secretary may not mail another such notice to such partner with respect to the same taxable year of the same partnership in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

(g) Tax matters partner must keep partners informed of proceedings

To the extent and in the manner provided by regulations, the tax matters partner of a partnership shall keep each partner informed of all administrative and judicial proceedings for the adjustment at the partnership level of partnership items.

(h) Pass-thru partner required to forward notice

(1) In general

If a pass-thru partner receives a notice with respect to a partnership proceeding from the Secretary, the tax matters partner, or another pass-thru partner, the pass-thru partner shall, within 30 days of receiving that notice, forward a copy of that notice to the person or persons holding an interest (through the pass-thru partner) in the profits or losses of the partnership for the partnership taxable year to which the notice relates.

(2) Partnership as pass-thru partner

In the case of a pass-thru partner which is a partnership, the tax matters partner of such partnership shall be responsible for forwarding copies of the notice to the partners of such partnership.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 649.)

§ 6224. Participation in administrative proceedings; waivers; agreements

(a) Participation in administrative proceedings

Any partner has the right to participate in any administrative proceeding relating to the determination of partnership items at the partnership level.

(b) Partner may waive rights**(1) In general**

A partner may at any time waive—

(A) any right such partner has under this subchapter, and

(B) any restriction under this subchapter on action by the Secretary.

(2) Form

Any waiver under paragraph (1) shall be made by a signed notice in writing filed with the Secretary.

(c) Settlement agreement

In the absence of a showing of fraud, malfeasance, or misrepresentation of fact—

(1) Binds all parties

A settlement agreement between the Secretary or the Attorney General (or his delegate) and 1 or more partners in a partnership with respect to the determination of partnership items for any partnership taxable year shall (except as otherwise provided in such agreement) be binding on all parties to such agreement with respect to the determination of partnership items for such partnership taxable year. An indirect partner is bound by any such agreement entered into by the pass-thru partner unless the indirect partner has been identified as provided in section 6223(c)(3).

(2) Other partners have right to enter into consistent agreements

If the Secretary or the Attorney General (or his delegate) enters into a settlement agreement with any partner with respect to partnership items for any partnership taxable year, the Secretary or the Attorney General (or his delegate) shall offer to any other partner who so requests settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement. Except in the case of an election under paragraph (2) or (3) of section 6223(e) to have a settlement agreement described in this paragraph apply, this paragraph shall apply with respect to a settlement agreement entered into with a partner before notice of a final partnership administrative adjustment is mailed to the tax matters partner only if such other partner makes the request before the expiration of 150 days after the day on which such notice is mailed to the tax matters partner.

(3) Tax matters partner may bind certain other partners**(A) In general**

A partner who is not a notice partner (and not a member of a notice group described in subsection (b)(2) of section 6223) shall be bound by any settlement agreement—

(i) which is entered into by the tax matters partner, and

(ii) in which the tax matters partner expressly states that such agreement shall bind the other partners.

(B) Exception

Subparagraph (A) shall not apply to any partner who (within the time prescribed by

the Secretary) files a statement with the Secretary providing that the tax matters partner shall not have the authority to enter into a settlement agreement on behalf of such partner.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 651; amended Pub. L. 107-147, title IV, § 416(d)(1)(A), Mar. 9, 2002, 116 Stat. 55.)

AMENDMENTS

2002—Subsec. (c)(1), (2). Pub. L. 107-147 inserted “or the Attorney General (or his delegate)” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title IV, § 416(d)(2), Mar. 9, 2002, 116 Stat. 55, provided that: “The amendments made by this subsection [amending this section and sections 6229, 6231, and 6234 of this title] shall apply with respect to settlement agreements entered into after the date of the enactment of this Act [Mar. 9, 2002].”

§ 6225. Assessments made only after partnership level proceedings are completed**(a) Restriction on assessment and collection**

Except as otherwise provided in this subchapter, no assessment of a deficiency attributable to any partnership item may be made (and no levy or proceeding in any court for the collection of any such deficiency may be made, begun, or prosecuted) before—

(1) the close of the 150th day after the day on which a notice of a final partnership administrative adjustment was mailed to the tax matters partner, and

(2) if a proceeding is begun in the Tax Court under section 6226 during such 150-day period, the decision of the court in such proceeding has become final.

(b) Premature action may be enjoined

Notwithstanding section 7421(a), any action which violates subsection (a) may be enjoined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition.

(c) Limit where no proceeding begun

If no proceeding under section 6226 is begun with respect to any final partnership administrative adjustment during the 150-day period described in subsection (a), the deficiency assessed against any partner with respect to the partnership items to which such adjustment relates shall not exceed the amount determined in accordance with such adjustment.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 652; amended Pub. L. 105-34, title XII, § 1239(a), Aug. 5, 1997, 111 Stat. 1027.)

AMENDMENTS

1997—Pub. L. 105-34 substituted “the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition.” for “the proper court.”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1239(f) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and sections 6226, 6230, 6501, 6512, 7421, 7459, and 7482 of this title] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

§ 6226. Judicial review of final partnership administrative adjustments

(a) Petition by tax matters partner

Within 90 days after the day on which a notice of a final partnership administrative adjustment is mailed to the tax matters partner, the tax matters partner may file a petition for a readjustment of the partnership items for such taxable year with—

- (1) the Tax Court,
- (2) the district court of the United States for the district in which the partnership's principal place of business is located, or
- (3) the Court of Federal Claims.

(b) Petition by partner other than tax matters partner

(1) In general

If the tax matters partner does not file a readjustment petition under subsection (a) with respect to any final partnership administrative adjustment, any notice partner (and any 5-percent group) may, within 60 days after the close of the 90-day period set forth in subsection (a), file a petition for a readjustment of the partnership items for the taxable year involved with any of the courts described in subsection (a).

(2) Priority of the Tax Court action

If more than 1 action is brought under paragraph (1) with respect to any partnership for any partnership taxable year, the first such action brought in the Tax Court shall go forward.

(3) Priority outside the Tax Court

If more than 1 action is brought under paragraph (1) with respect to any partnership for any taxable year but no such action is brought in the Tax Court, the first such action brought shall go forward.

(4) Dismissal of other actions

If an action is brought under paragraph (1) in addition to the action which goes forward under paragraph (2) or (3), such action shall be dismissed.

(5) Treatment of premature petitions

If—

(A) a petition for a readjustment of partnership items for the taxable year involved is filed by a notice partner (or a 5-percent group) during the 90-day period described in subsection (a), and

(B) no action is brought under paragraph (1) during the 60-day period described therein with respect to such taxable year which is not dismissed,

such petition shall be treated for purposes of paragraph (1) as filed on the last day of such 60-day period.

(6) Tax matters partner may intervene

The tax matters partner may intervene in any action brought under this subsection.

(c) Partners treated as parties

If an action is brought under subsection (a) or (b) with respect to a partnership for any partnership taxable year—

(1) each person who was a partner in such partnership at any time during such year shall be treated as a party to such action, and

(2) the court having jurisdiction of such action shall allow each such person to participate in the action.

(d) Partner must have interest in outcome

(1) In order to be party to action

Subsection (c) shall not apply to a partner after the day on which—

(A) the partnership items of such partner for the partnership taxable year became nonpartnership items by reason of 1 or more of the events described in subsection (b) of section 6231, or

(B) the period within which any tax attributable to such partnership items may be assessed against that partner expired.

Notwithstanding subparagraph (B), any person treated under subsection (c) as a party to an action shall be permitted to participate in such action (or file a readjustment petition under subsection (b) or paragraph (2) of this subsection) solely for the purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired with respect to such person, and the court having jurisdiction of such action shall have jurisdiction to consider such assertion.

(2) To file petition

No partner may file a readjustment petition under subsection (b) unless such partner would (after the application of paragraph (1) of this subsection) be treated as a party to the proceeding.

(e) Jurisdictional requirement for bringing action in district court or Court of Federal Claims

(1) In general

A readjustment petition under this section may be filed in a district court of the United States or the Court of Federal Claims only if the partner filing the petition deposits with the Secretary, on or before the day the petition is filed, the amount by which the tax liability of the partner would be increased if the treatment of partnership items on the partner's return were made consistent with the treatment of partnership items on the partnership return, as adjusted by the final partnership administrative adjustment. In the case of a petition filed by a 5-percent group, the requirement of the preceding sentence shall apply to each member of the group. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt to satisfy such requirements and any shortfall in the amount required to be deposited is timely corrected.

(2) Refund on request

If an action brought in a district court of the United States or in the Court of Federal

Claims is dismissed by reason of the priority of a Tax Court action under paragraph (2) of subsection (b), the Secretary shall, at the request of the partner who made the deposit, refund the amount deposited under paragraph (1).

(3) Interest payable

Any amount deposited under paragraph (1), while deposited, shall not be treated as a payment of tax for purposes of this title (other than chapter 67).

(f) Scope of judicial review

A court with which a petition is filed in accordance with this section shall have jurisdiction to determine all partnership items of the partnership for the partnership taxable year to which the notice of final partnership administrative adjustment relates, the proper allocation of such items among the partners, and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.

(g) Determination of court reviewable

Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such. With respect to the partnership, only the tax matters partner, a notice partner, or a 5-percent group may seek review of a determination by a court under this section.

(h) Effect of decision dismissing action

If an action brought under this section is dismissed (other than under paragraph (4) of subsection (b)), the decision of the court dismissing the action shall be considered as its decision that the notice of final partnership administrative adjustment is correct, and an appropriate order shall be entered in the records of the court.

(Added Pub. L. 97-248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 653; amended Pub. L. 97-448, title III, §306(c)(1)(A), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 102-572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 105-34, title XII, §§1238(b)(1), 1239(b), 1240(a), Aug. 5, 1997, 111 Stat. 1026-1028.)

AMENDMENTS

1997—Subsec. (b)(5), (6). Pub. L. 105-34, §1240(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d)(1). Pub. L. 105-34, §1239(b), inserted concluding provisions.

Subsec. (f). Pub. L. 105-34, §1238(b)(1), substituted “relates,” for “relates and” and inserted “, and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item” before period at end.

1992—Subsecs. (a)(3), (e), (g). Pub. L. 102-572 substituted “Court of Federal Claims” for “Claims Court” wherever appearing.

1983—Subsec. (g). Pub. L. 97-448 substituted “With respect to the partnership, only the tax matters partner” for “Only the tax matters partner”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1238(b)(1) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1238(c) of Pub. L. 105-34, set out as a note under section 6221 of this title.

Amendment by section 1239(b) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105-34, set out as a note under section 6225 of this title.

Section 1240(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to petitions filed after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 311(d) of Pub. L. 97-448, set out as a note under section 31 of this title.

§ 6227. Administrative adjustment requests

(a) General rule

A partner may file a request for an administrative adjustment of partnership items for any partnership taxable year at any time which is—

(1) within 3 years after the later of—

(A) the date on which the partnership return for such year is filed, or

(B) the last day for filing the partnership return for such year (determined without regard to extensions), and

(2) before the mailing to the tax matters partner of a notice of final partnership administrative adjustment with respect to such taxable year.

(b) Special rule in case of extension of period of limitations under section 6229

The period prescribed by subsection (a)(1) for filing of a request for an administrative adjustment shall be extended—

(1) for the period within which an assessment may be made pursuant to an agreement (or any extension thereof) under section 6229(b), and

(2) for 6 months thereafter.

(c) Requests by tax matters partner on behalf of partnership

(1) Substituted return

If the tax matters partner—

(A) files a request for an administrative adjustment, and

(B) asks that the treatment shown on the request be substituted for the treatment of partnership items on the partnership return to which the request relates,

the Secretary may treat the changes shown on such request as corrections of mathematical or clerical errors appearing on the partnership return.

(2) Requests not treated as substituted returns

(A) In general

If the tax matters partner files an administrative adjustment request on behalf of the partnership which is not treated as a substituted return under paragraph (1), the Secretary may, with respect to all or any part of the requested adjustments—

- (i) without conducting any proceeding, allow or make to all partners the credits or refunds arising from the requested adjustments,
- (ii) conduct a partnership proceeding under this subchapter, or
- (iii) take no action on the request.

(B) Exceptions

Clause (i) of subparagraph (A) shall not apply with respect to a partner after the day on which the partnership items become nonpartnership items by reason of 1 or more of the events described in subsection (b) of section 6231.

(3) Request must show effect on distributive shares

The tax matters partner shall furnish with any administrative adjustment request on behalf of the partnership revised schedules showing the effect of such request on the distributive shares of the partners and such other information as may be required under regulations.

(d) Other requests

If any partner files a request for an administrative adjustment (other than a request described in subsection (c)), the Secretary may—

- (1) process the request in the same manner as a claim for credit or refund with respect to items which are not partnership items,
- (2) assess any additional tax that would result from the requested adjustments,
- (3) mail to the partner, under subparagraph (A) of section 6231(b)(1) (relating to items becoming nonpartnership items), a notice that all partnership items of the partner for the partnership taxable year to which such request relates shall be treated as nonpartnership items, or
- (4) conduct a partnership proceeding.

(e) Requests with respect to bad debts or worthless securities

In the case of that portion of any request for an administrative adjustment which relates to the deductibility by the partnership under section 166 of a debt as a debt which became worthless, or under section 165(g) of a loss from worthlessness of a security, the period prescribed in subsection (a)(1) shall be 7 years from the last day for filing the partnership return for the year with respect to which such request is made (determined without regard to extensions).

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 655; amended Pub. L. 105-34, title XII, §§ 1236(a), 1243(a), Aug. 5, 1997, 111 Stat. 1025, 1029; Pub. L. 107-147, title IV, § 417(19)(A), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107-147 substituted “subsection (c)” for “subsection (b)” in introductory provisions.

1997—Subsecs. (b) to (d). Pub. L. 105-34, § 1236(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (e). Pub. L. 105-34, § 1243(a), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1236(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this sec-

tion] shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248].”

Section 1243(b) of Pub. L. 105-34 provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248].

“(2) TREATMENT OF REQUESTS FILED BEFORE DATE OF ENACTMENT.—In the case of that portion of any request (filed before the date of the enactment of this Act [Aug. 5, 1997]) for an administrative adjustment which relates to the deductibility of a debt as a debt which became worthless or the deductibility of a loss from the worthlessness of a security—

“(A) paragraph (2) of section 6227(a) of the Internal Revenue Code of 1986 shall not apply,

“(B) the period for filing a petition under section 6228 of the Internal Revenue Code of 1986 with respect to such request shall not expire before the date 6 months after the date of the enactment of this Act, and

“(C) such a petition may be filed without regard to whether there was a notice of the beginning of an administrative proceeding or a final partnership administrative adjustment.”

§ 6228. Judicial review where administrative adjustment request is not allowed in full

(a) Request on behalf of partnership

(1) In general

If any part of an administrative adjustment request filed by the tax matters partner under subsection (c) of section 6227 is not allowed by the Secretary, the tax matters partner may file a petition for an adjustment with respect to the partnership items to which such part of the request relates with—

(A) the Tax Court,

(B) the district court of the United States for the district in which the principal place of business of the partnership is located, or

(C) the Court of Federal Claims.

(2) Period for filing petition

(A) In general

A petition may be filed under paragraph (1) with respect to partnership items for a partnership taxable year only—

(i) after the expiration of 6 months from the date of filing of the request under section 6227, and

(ii) before the date which is 2 years after the date of such request.

(B) No petition after notice of beginning of administrative proceeding

No petition may be filed under paragraph (1) after the day the Secretary mails to the partnership a notice of the beginning of an administrative proceeding with respect to the partnership taxable year to which such request relates.

(C) Failure by Secretary to issue timely notice of adjustment

If the Secretary—

(i) mails the notice referred to in subparagraph (B) before the expiration of the 2-year period referred to in clause (ii) of subparagraph (A), and

(ii) fails to mail a notice of final partnership administrative adjustment with re-

spect to the partnership taxable year to which the request relates before the expiration of the period described in section 6229(a) (including any extension by agreement),

subparagraph (B) shall cease to apply with respect to such request, and the 2-year period referred to in clause (ii) of subparagraph (A) shall not expire before the date 6 months after the expiration of the period described in section 6229(a) (including any extension by agreement).

(D) Extension of time

The 2-year period described in subparagraph (A)(ii) shall be extended for such period as may be agreed upon in writing between the tax matters partner and the Secretary.

(3) Coordination with administrative adjustment

(A) Administrative adjustment before filing of petition

No petition may be filed under this subsection after the Secretary mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the request under section 6227 relates.

(B) Administrative adjustment after filing but before hearing of petition

If the Secretary mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the request under section 6227 relates after the filing of a petition under this subsection but before the hearing of such petition, such petition shall be treated as an action brought under section 6226 with respect to that administrative adjustment, except that subsection (e) of section 6226 shall not apply.

(C) Notice must be before expiration of statute of limitations

A notice of final partnership administrative adjustment for the partnership taxable year shall be taken into account under subparagraphs (A) and (B) only if such notice is mailed before the expiration of the period prescribed by section 6229 for making assessments of tax attributable to partnership items for such taxable year.

(4) Partners treated as party to action

(A) In general

If an action is brought by the tax matters partner under paragraph (1) with respect to any request for an adjustment of a partnership item for any taxable year—

- (i) each person who was a partner in such partnership at any time during the partnership taxable year involved shall be treated as a party to such action, and
- (ii) the court having jurisdiction of such action shall allow each such person to participate in the action.

(B) Partners must have interest in outcome

For purposes of subparagraph (A), rules similar to the rules of paragraph (1) of section 6226(d) shall apply.

(5) Scope of judicial review

Except in the case described in subparagraph (B) of paragraph (3), a court with which a petition is filed in accordance with this subsection shall have jurisdiction to determine only those partnership items to which the part of the request under section 6227 not allowed by the Secretary relates and those items with respect to which the Secretary asserts adjustments as offsets to the adjustments requested by the tax matters partner.

(6) Determination of court reviewable

Any determination by a court under this subsection shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such. With respect to the partnership, only the tax matters partner, a notice partner, or a 5-percent group may seek review of a determination by a court under this subsection.

(b) Other requests

(1) Notice providing that items become nonpartnership items

If the Secretary mails to a partner, under subparagraph (A) of section 6231(b)(1) (relating to items ceasing to be partnership items), a notice that all partnership items of the partner for the partnership taxable year to which a timely request for administrative adjustment under subsection (d) of section 6227 relates shall be treated as nonpartnership items—

(A) such request shall be treated as a claim for credit or refund of an overpayment attributable to nonpartnership items, and

(B) the partner may bring an action under section 7422 with respect to such claim at any time within 2 years of the mailing of such notice.

(2) Other cases

(A) In general

If the Secretary fails to allow any part of an administrative adjustment request filed under subsection (d) of section 6227 by a partner and paragraph (1) does not apply—

(i) such partner may, pursuant to section 7422, begin a civil action for refund of any amount due by reason of the adjustments described in such part of the request, and

(ii) on the beginning of such civil action, the partnership items of such partner for the partnership taxable year to which such part of such request relates shall be treated as nonpartnership items for purposes of this subchapter.

(B) Period for filing petition

(i) In general

An action may be begun under subparagraph (A) with respect to an administrative adjustment request for a partnership taxable year only—

(I) after the expiration of 6 months from the date of filing of the request under section 6227, and

(II) before the date which is 2 years after the date of filing of such request.

(ii) Extension of time

The 2-year period described in subclause (II) of clause (i) shall be extended for such period as may be agreed upon in writing between the partner and the Secretary.

(C) Action barred after partnership proceeding has begun

No petition may be filed under subparagraph (A) with respect to an administrative adjustment request for a partnership taxable year after the Secretary mails to the partnership a notice of the beginning of a partnership proceeding with respect to such year.

(D) Failure by Secretary to issue timely notice of adjustment

If the Secretary—

(i) mails the notice referred to in subparagraph (C) before the expiration of the 2-year period referred to in clause (i)(II) of subparagraph (B), and

(ii) fails to mail a notice of final partnership administrative adjustment with respect to the partnership taxable year to which the request relates before the expiration of the period described in section 6229(a) (including any extension by agreement),

subparagraph (C) shall cease to apply with respect to such request, and the 2-year period referred to in clause (i)(II) of subparagraph (B) shall not expire before the date 6 months after the expiration of the period described in section 6229(a) (including any extension by agreement).

(Added Pub. L. 97-248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 656; amended Pub. L. 97-448, title III, §306(c)(1)(B), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 102-572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 107-147, title IV, §417(19)(B), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-147, §417(19)(B)(i), substituted “subsection (c) of section 6227” for “subsection (b) of section 6227”.

Subsec. (a)(3)(A). Pub. L. 107-147, §417(19)(B)(ii), struck out “subsection (b) of” before “section 6227”.

Subsec. (b)(1), (2)(A). Pub. L. 107-147, §417(19)(B)(iii), substituted “subsection (d) of section 6227” for “subsection (c) of section 6227”.

1992—Subsec. (a)(1)(C), (6). Pub. L. 102-572 substituted “Court of Federal Claims” for “Claims Court”.

1983—Subsec. (a)(6). Pub. L. 97-448 substituted “With respect to the partnership, only the tax matters partner” for “Only the tax matters partner”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 311(d) of Pub. L. 97-448, set out as a note under section 31 of this title.

§ 6229. Period of limitations for making assessments**(a) General rule**

Except as otherwise provided in this section, the period for assessing any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before the date which is 3 years after the later of—

(1) the date on which the partnership return for such taxable year was filed, or

(2) the last day for filing such return for such year (determined without regard to extensions).

(b) Extension by agreement**(1) In general**

The period described in subsection (a) (including an extension period under this subsection) may be extended—

(A) with respect to any partner, by an agreement entered into by the Secretary and such partner, and

(B) with respect to all partners, by an agreement entered into by the Secretary and the tax matters partner (or any other person authorized by the partnership in writing to enter into such an agreement),

before the expiration of such period.

(2) Special rule with respect to debtors in title 11 cases

Notwithstanding any other law or rule of law, if an agreement is entered into under paragraph (1)(B) and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Secretary has been notified of the bankruptcy proceeding in accordance with regulations prescribed by the Secretary.

(3) Coordination with section 6501(c)(4)

Any agreement under section 6501(c)(4) shall apply with respect to the period described in subsection (a) only if the agreement expressly provides that such agreement applies to tax attributable to partnership items.

(c) Special rule in case of fraud, etc.**(1) False return**

If any partner has, with the intent to evade tax, signed or participated directly or indirectly in the preparation of a partnership return which includes a false or fraudulent item—

(A) in the case of partners so signing or participating in the preparation of the return, any tax imposed by subtitle A which is attributable to any partnership item (or affected item) for the partnership taxable year to which the return relates may be assessed at any time, and

(B) in the case of all other partners, subsection (a) shall be applied with respect to such return by substituting “6 years” for “3 years”.

(2) Substantial omission of income

If any partnership omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in its return, subsection (a) shall be applied by substituting “6 years” for “3 years”.

(3) No return

In the case of a failure by a partnership to file a return for any taxable year, any tax attributable to a partnership item (or affected item) arising in such year may be assessed at any time.

(4) Return filed by Secretary

For purposes of this section, a return executed by the Secretary under subsection (b) of section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

(d) Suspension when Secretary makes administrative adjustment

If notice of a final partnership administrative adjustment with respect to any taxable year is mailed to the tax matters partner, the running of the period specified in subsection (a) (as modified by other provisions of this section) shall be suspended—

(1) for the period during which an action may be brought under section 6226 (and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and

(2) for 1 year thereafter.

(e) Unidentified partner

If—

(1) the name, address, and taxpayer identification number of a partner are not furnished on the partnership return for a partnership taxable year, and

(2)(A) the Secretary, before the expiration of the period otherwise provided under this section with respect to such partner, mails to the tax matters partner the notice specified in paragraph (2) of section 6223(a) with respect to such taxable year, or

(B) the partner has failed to comply with subsection (b) of section 6222 (relating to notification of inconsistent treatment) with respect to any partnership item for such taxable year,

the period for assessing any tax imposed by subtitle A which is attributable to any partnership item (or affected item) for such taxable year shall not expire with respect to such partner before the date which is 1 year after the date on which the name, address, and taxpayer identification number of such partner are furnished to the Secretary.

(f) Special rules**(1) Items becoming nonpartnership items**

If before the expiration of the period otherwise provided in this section for assessing any tax imposed by subtitle A with respect to the partnership items of a partner for the partnership taxable year, such items become nonpartnership items by reason of 1 or more of the events described in subsection (b) of section 6231, the period for assessing any tax imposed

by subtitle A which is attributable to such items (or any item affected by such items) shall not expire before the date which is 1 year after the date on which the items become nonpartnership items. The period described in the preceding sentence (including any extension period under this sentence) may be extended with respect to any partner by agreement entered into by the Secretary and such partner.

(2) Special rule for partial settlement agreements

If a partner enters into a settlement agreement with the Secretary or the Attorney General (or his delegate) with respect to the treatment of some of the partnership items in dispute for a partnership taxable year but other partnership items for such year remain in dispute, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into.

(g) Period of limitations for penalties

The provisions of this section shall apply also in the case of any addition to tax or an additional amount imposed under subchapter A of chapter 68 which arises with respect to any tax imposed under subtitle A in the same manner as if such addition or additional amount were a tax imposed by subtitle A.

(h) Suspension during pendency of bankruptcy proceeding

If a petition is filed naming a partner as a debtor in a bankruptcy proceeding under title 11 of the United States Code, the running of the period of limitations provided in this section with respect to such partner shall be suspended—

(1) for the period during which the Secretary is prohibited by reason of such bankruptcy proceeding from making an assessment, and

(2) for 60 days thereafter.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 659; amended Pub. L. 99-514, title XVIII, § 1875(d)(1), Oct. 22, 1986, 100 Stat. 2896; Pub. L. 100-647, title I, § 1018(o)(3), Nov. 10, 1988, 102 Stat. 3585; Pub. L. 105-34, title XII, §§ 1233(a)-(c), 1235(a), Aug. 5, 1997, 111 Stat. 1023, 1024; Pub. L. 107-147, title IV, § 416(d)(1)(B), Mar. 9, 2002, 116 Stat. 55.)

AMENDMENTS

2002—Subsec. (f)(2). Pub. L. 107-147 inserted “or the Attorney General (or his delegate)” after “Secretary”.

1997—Subsec. (b)(2), (3). Pub. L. 105-34, § 1233(c), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(1). Pub. L. 105-34, § 1233(a), substituted “(and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and” for “(and, if an action with respect to such administrative adjustment is brought during such period, until the decision of the court in such action becomes final), and”.

Subsec. (f). Pub. L. 105-34, § 1235(a), substituted “Special rules” for “Items becoming nonpartnership items” in heading, designated existing provisions as par. (1), added heading, and realigned margins, and added par. (2).

Subsec. (h). Pub. L. 105-34, § 1233(b), added subsec. (h). 1988—Subsec. (f). Pub. L. 100-647 inserted sentence at end relating to extension of period with respect to any partner by agreement entered into by Secretary and such partner.

1986—Subsec. (g). Pub. L. 99-514 added subsec. (g).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 applicable with respect to settlement agreements entered into after Mar. 9, 2002, see section 416(d)(2) of Pub. L. 107-147, set out as a note under section 6224 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1233(d) of Pub. L. 105-34 provided that:

“(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to partnership taxable years with respect to which the period under section 6229 of the Internal Revenue Code of 1986 [26 U.S.C. 6229] for assessing tax has not expired on or before the date of the enactment of this Act [Aug. 5, 1997].

“(2) SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to agreements entered into after the date of the enactment of this Act.”

Section 1235(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to settlements entered into after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 6230. Additional administrative provisions

(a) Coordination with deficiency proceedings

(1) In general

Except as provided in paragraph (2) or (3), subchapter B of this chapter shall not apply to the assessment or collection of any computational adjustment.

(2) Deficiency proceedings to apply in certain cases

(A) Subchapter B shall apply to any deficiency attributable to—

(i) affected items which require partner level determinations (other than penalties, additions to tax, and additional amounts that relate to adjustments to partnership items), or

(ii) items which have become nonpartnership items (other than by reason of section 6231(b)(1)(C)) and are described in section 6231(e)(1)(B).

(B) Subchapter B shall be applied separately with respect to each deficiency de-

scribed in subparagraph (A) attributable to each partnership.

(C) Notwithstanding any other law or rule of law, any notice or proceeding under subchapter B with respect to a deficiency described in this paragraph shall not preclude or be precluded by any other notice, proceeding, or determination with respect to a partner's tax liability for a taxable year.

(3) Special rule in case of assertion by partner's spouse of innocent spouse relief

(A) Notwithstanding section 6404(b), if the spouse of a partner asserts that section 6013(e) applies with respect to a liability that is attributable to any adjustment to a partnership item (including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment), then such spouse may file with the Secretary within 60 days after the notice of computational adjustment is mailed to the spouse a request for abatement of the assessment specified in such notice. Upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by subchapter B. The period for making any such reassessment shall not expire before the expiration of 60 days after the date of such abatement.

(B) If the spouse files a petition with the Tax Court pursuant to section 6213 with respect to the request for abatement described in subparagraph (A), the Tax Court shall only have jurisdiction pursuant to this section to determine whether the requirements of section 6013(e) have been satisfied. For purposes of such determination, the treatment of partnership items (and the applicability of any penalties, additions to tax, or additional amounts) under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

(C) Rules similar to the rules contained in subparagraphs (B) and (C) of paragraph (2) shall apply for purposes of this paragraph.

(b) Mathematical and clerical errors appearing on partnership return

(1) In general

Section 6225 shall not apply to any adjustment necessary to correct a mathematical or clerical error (as defined in section 6213(g)(2)) appearing on the partnership return.

(2) Exception

Paragraph (1) shall not apply to a partner if, within 60 days after the day on which notice of the correction of the error is mailed to the partner, such partner files with the Secretary a request that the correction not be made.

(c) Claims arising out of erroneous computations, etc.

(1) In general

A partner may file a claim for refund on the grounds that—

(A) the Secretary erroneously computed any computational adjustment necessary—

(i) to make the partnership items on the partner's return consistent with the treatment of the partnership items on the partnership return, or

(ii) to apply to the partner a settlement, a final partnership administrative adjustment, or the decision of a court in an action brought under section 6226 or section 6228(a),

(B) the Secretary failed to allow a credit or to make a refund to the partner in the amount of the overpayment attributable to the application to the partner of a settlement, a final partnership administrative adjustment, or the decision of a court in an action brought under section 6226 or section 6228(a), or

(C) the Secretary erroneously imposed any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.

(2) Time for filing claim

(A) Under paragraph (1)(A) or (C)

Any claim under subparagraph (A) or (C) of paragraph (1) shall be filed within 6 months after the day on which the Secretary mails the notice of computational adjustment to the partner.

(B) Under paragraph (1)(B)

Any claim under paragraph (1)(B) shall be filed within 2 years after whichever of the following days is appropriate:

(i) the day on which the settlement is entered into,

(ii) the day on which the period during which an action may be brought under section 6226 with respect to the final partnership administrative adjustment expires, or

(iii) the day on which the decision of the court becomes final.

(3) Suit if claim not allowed

If any portion of a claim under paragraph (1) is not allowed, the partner may bring suit with respect to such portion within the period specified in subsection (a) of section 6532 (relating to periods of limitations on refund suits).

(4) No review of substantive issues

For purposes of any claim or suit under this subsection, the treatment of partnership items on the partnership return, under the settlement, under the final partnership administrative adjustment, or under the decision of the court (whichever is appropriate) shall be conclusive. In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive. Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may apply or to challenge the amount of the computational adjustment.

(5) Rules for seeking innocent spouse relief

(A) In general

The spouse of a partner may file a claim for refund on the ground that the Secretary failed to relieve the spouse under section 6015 from a liability that is attributable to an adjustment to a partnership item (including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment).

(B) Time for filing claim

Any claim under subparagraph (A) shall be filed within 6 months after the day on which the Secretary mails to the spouse the notice of computational adjustment referred to in subsection (a)(3)(A).

(C) Suit if claim not allowed

If the claim under subparagraph (B) is not allowed, the spouse may bring suit with respect to the claim within the period specified in paragraph (3).

(D) Prior determinations are binding

For purposes of any claim or suit under this paragraph, the treatment of partnership items (and the applicability of any penalties, additions to tax, or additional amounts) under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

(d) Special rules with respect to credits or refunds attributable to partnership items

(1) In general

Except as otherwise provided in this subsection, no credit or refund of an overpayment attributable to a partnership item (or an affected item) for a partnership taxable year shall be allowed or made to any partner after the expiration of the period of limitation prescribed in section 6229 with respect to such partner for assessment of any tax attributable to such item.

(2) Administrative adjustment request

If a request for an administrative adjustment under section 6227 with respect to a partnership item is timely filed, credit or refund of any overpayment attributable to such partnership item (or an affected item) may be allowed or made at any time before the expiration of the period prescribed in section 6228 for bringing suit with respect to such request.

(3) Claim under subsection (c)

If a timely claim is filed under subsection (c) for a credit or refund of an overpayment attributable to a partnership item (or affected item), credit or refund of such overpayment may be allowed or made at any time before the expiration of the period specified in section 6532 (relating to periods of limitations on suits) for bringing suit with respect to such claim.

(4) Timely suit

Paragraph (1) shall not apply to any credit or refund of any overpayment attributable to

a partnership item (or an item affected by such partnership item) if a partner brings a timely suit with respect to a timely administrative adjustment request under section 6228 or a timely claim under subsection (c) relating to such overpayment.

(5) Overpayments refunded without requirement that partner file claim

In the case of any overpayment by a partner which is attributable to a partnership item (or an affected item) and which may be refunded under this subchapter, to the extent practicable credit or refund of such overpayment shall be allowed or made without any requirement that the partner file a claim therefor.

(6) Subchapter B of chapter 66 not applicable

Subchapter B of chapter 66 (relating to limitations on credit or refund) shall not apply to any credit or refund of an overpayment attributable to a partnership item.

(e) Tax matters partner required to furnish names of partners to Secretary

If the Secretary mails to any partnership the notice specified in paragraph (1) of section 6223(a) with respect to any partnership taxable year, the tax matters partner shall furnish to the Secretary the name, address, profits interest, and taxpayer identification number of each person who was a partner in such partnership at any time during such taxable year. If the tax matters partner later discovers that the information furnished to the Secretary was incorrect or incomplete, the tax matters partner shall furnish such revised or additional information as may be necessary.

(f) Failure of tax matters partner, etc., to fulfill responsibility does not affect applicability of proceeding

The failure of the tax matters partner, a pass-thru partner, the representative of a notice group, or any other representative of a partner to provide any notice or perform any act required under this subchapter or under regulations prescribed under this subchapter on behalf of such partner does not affect the applicability of any proceeding or adjustment under this subchapter to such partner.

(g) Date decision of court becomes final

For purposes of section 6229(d)(1) and section 6230(c)(2)(B), the principles of section 7481(a) shall be applied in determining the date on which a decision of a district court or the Court of Federal Claims becomes final.

(h) Examination authority not limited

Nothing in this subchapter shall be construed as limiting the authority granted to the Secretary under section 7602.

(i) Time and manner of filing statements, making elections, etc.

Except as otherwise provided in this subchapter, each—

- (1) statement,
- (2) election,
- (3) request, and
- (4) furnishing of information,

shall be filed or made at such time, in such manner, and at such place as may be prescribed in regulations.

(j) Partnerships having principal place of business outside the United States

For purposes of sections 6226 and 6228, a principal place of business located outside the United States shall be treated as located in the District of Columbia.

(k) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter. Any reference in this subchapter to regulations is a reference to regulations prescribed by the Secretary.

(l) Court rules

Any action brought under any provision of this subchapter shall be conducted in accordance with such rules of practice and procedure as may be prescribed by the Court in which the action is brought.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 660; amended Pub. L. 98-369, div. A, title VII, § 714(p)(2)(A), July 18, 1984, 98 Stat. 964; Pub. L. 99-514, title XVIII, § 1875(d)(2)(A), Oct. 22, 1986, 100 Stat. 2896; Pub. L. 100-647, title I, § 1018(o)(1), Nov. 10, 1988, 102 Stat. 3584; Pub. L. 102-572, title IX, § 902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 105-34, title XII, §§ 1237(a)-(c)(1), 1238(b)(2)-(6), 1239(c)(1), Aug. 5, 1997, 111 Stat. 1025-1028; Pub. L. 105-206, title III, § 3201(e)(2), July 22, 1998, 112 Stat. 740.)

AMENDMENTS

1998—Subsec. (c)(5)(A). Pub. L. 105-206 substituted “section 6015” for “section 6013(e)”.

1997—Subsec. (a)(1). Pub. L. 105-34, § 1237(c)(1), substituted “paragraph (2) or (3)” for “paragraph (2)”.

Subsec. (a)(2)(A)(i). Pub. L. 105-34, § 1238(b)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “affected items which require partner level determinations, or”.

Subsec. (a)(3). Pub. L. 105-34, § 1237(a), added par. (3).

Subsec. (a)(3)(A). Pub. L. 105-34, § 1238(b)(3)(A), inserted “(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)” after “partnership item”.

Subsec. (a)(3)(B). Pub. L. 105-34, § 1238(b)(3)(B), inserted “(and the applicability of any penalties, additions to tax, or additional amounts)” after “partnership items”.

Subsec. (c)(1)(C). Pub. L. 105-34, § 1238(b)(4), added subpar. (C).

Subsec. (c)(2)(A). Pub. L. 105-34, § 1238(b)(5), inserted “or (C)” after “(1)(A)” in subpar. heading and substituted “subparagraph (A) or (C) of paragraph (1)” for “paragraph (1)(A)” in text.

Subsec. (c)(4). Pub. L. 105-34, § 1238(b)(6), inserted at end “In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive. Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may apply or to challenge the amount of the computational adjustment.”

Subsec. (c)(5). Pub. L. 105-34, § 1237(b), added par. (5).

Subsec. (c)(5)(A). Pub. L. 105-34, § 1238(b)(3)(C), inserted before period at end “(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)”.

Subsec. (c)(5)(D). Pub. L. 105-34, § 1238(b)(3)(D), inserted “(and the applicability of any penalties, additions to tax, or additional amounts)” after “partnership items”.

Subsec. (d)(6). Pub. L. 105-34, §1239(c)(1), struck out “(or an affected item)” after “partnership item”.

1992—Subsec. (g). Pub. L. 102-572 substituted “Court of Federal Claims” for “Claims Court”.

1988—Subsec. (a)(2)(A)(ii). Pub. L. 100-647 inserted “(other than by reason of section 6231(b)(1)(C))” after “nonpartnership items”.

1986—Subsec. (a). Pub. L. 99-514 substituted “Coordination with deficiency proceedings” for “Normal deficiency proceedings do not apply to computational adjustments” as subsec. heading, and amended text generally. Prior to amendment text read as follows: “Subchapter B of this chapter shall not apply to the assessment or collection of any computational adjustment.”

1984—Subsec. (c)(1)(B). Pub. L. 98-369 struck out “(or erroneously computed the amount of any such credit or refund)” after “section 6228(a)”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of such date, see section 3201(g)(1) of Pub. L. 105-206, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1237(d) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and section 6503 of this title] shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248].”

Amendment by section 1238(b)(2)–(6) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1238(c) of Pub. L. 105-34, set out as a note under section 6221 of this title.

Amendment by section 1239(c)(1) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105-34, set out as a note under section 6225 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1875(d)(2)(C) of Pub. L. 99-514 provided that: “The amendments made by this paragraph [amending this section and sections 6213 and 6503 of this title] shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 6231. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Partnership

(A) In general

Except as provided in subparagraph (B), the term “partnership” means any partnership required to file a return under section 6031(a).

(B) Exception for small partnerships

(i) In general

The term “partnership” shall not include any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election to have subchapter apply

A partnership (within the meaning of subparagraph (A)) may for any taxable year elect to have clause (i) not apply. Such election shall apply for such taxable year and all subsequent taxable years unless revoked with the consent of the Secretary.

(2) Partner

The term “partner” means—

(A) a partner in the partnership, and

(B) any other person whose income tax liability under subtitle A is determined in whole or in part by taking into account directly or indirectly partnership items of the partnership.

(3) Partnership item

The term “partnership item” means, with respect to a partnership, any item required to be taken into account for the partnership’s taxable year under any provision of subtitle A to the extent regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the partnership level than at the partner level.

(4) Nonpartnership item

The term “nonpartnership item” means an item which is (or is treated as) not a partnership item.

(5) Affected item

The term “affected item” means any item to the extent such item is affected by a partnership item.

(6) Computational adjustment

The term “computational adjustment” means the change in the tax liability of a partner which properly reflects the treatment under this subchapter of a partnership item. All adjustments required to apply the results of a proceeding with respect to a partnership under this subchapter to an indirect partner shall be treated as computational adjustments.

(7) Tax matters partner

The tax matters partner of any partnership is—

(A) the general partner designated as the tax matters partner as provided in regulations, or

(B) if there is no general partner who has been so designated, the general partner having the largest profits interest in the partnership at the close of the taxable year involved (or, where there is more than 1 such partner, the 1 of such partners whose name would appear first in an alphabetical listing).

If there is no general partner designated under subparagraph (A) and the Secretary determines that it is impracticable to apply subparagraph (B), the partner selected by the Secretary shall be treated as the tax matters partner. The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.

(8) Notice partner

The term “notice partner” means a partner who, at the time in question, would be entitled to notice under subsection (a) of section 6223 (determined without regard to subsections (b)(2) and (e)(1)(B) thereof).

(9) Pass-thru partner

The term “pass-thru partner” means a partnership, estate, trust, S corporation, nominee, or other similar person through whom other persons hold an interest in the partnership with respect to which proceedings under this subchapter are conducted.

(10) Indirect partner

The term “indirect partner” means a person holding an interest in a partnership through 1 or more pass-thru partners.

(11) 5-percent group

A 5-percent group is a group of partners who for the partnership taxable year involved had profits interests which aggregated 5 percent or more.

(12) Husband and wife

Except to the extent otherwise provided in regulations, a husband and wife who have a joint interest in a partnership shall be treated as 1 person.

(b) Items cease to be partnership items in certain cases

(1) In general

For purposes of this subchapter, the partnership items of a partner for a partnership taxable year shall become nonpartnership items as of the date—

(A) the Secretary mails to such partner a notice that such items shall be treated as nonpartnership items,

(B) the partner files suit under section 6228(b) after the Secretary fails to allow an administrative adjustment request with respect to any of such items,

(C) the Secretary or the Attorney General (or his delegate) enters into a settlement agreement with the partner with respect to such items, or

(D) such change occurs under subsection (e) of section 6223 (relating to effect of Secretary's failure to provide notice) or under subsection (c) of this section.

(2) Circumstances in which notice is permitted

The Secretary may mail the notice referred to in subparagraph (A) of paragraph (1) to a partner with respect to partnership items for a partnership taxable year only if—

(A) such partner—

(i) has complied with subparagraph (B) of section 6222(b)(1) (relating to notification of inconsistent treatment) with respect to one or more of such items, and

(ii) has not, as of the date on which the Secretary mails the notice, filed a request for administrative adjustments which would make the partner's treatment of the item or items with respect to which the partner complied with subparagraph (B) of section 6222(b)(1) consistent with the treatment of such item or items on the partnership return, or

(B)(i) such partner has filed a request under section 6227(d) for administrative adjustment of one or more of such items, and

(ii) the adjustments requested would not make such partner's treatment of such items consistent with the treatment of such items on the partnership return.

(3) Notice must be mailed before beginning of partnership proceeding

Any notice to a partner under subparagraph (A) of paragraph (1) with respect to partnership items for a partnership taxable year shall be mailed before the day on which the Secretary mails to the tax matters partner a notice of the beginning of an administrative proceeding at the partnership level with respect to such items.

(c) Regulations with respect to certain special enforcement areas

(1) Applicability of subsection

This subsection applies in the case of—

(A) assessments under section 6851 (relating to termination assessments of income tax) or section 6861 (relating to jeopardy assessments of income, estate, gift, and certain excise taxes),

(B) criminal investigations,

(C) indirect methods of proof of income,

(D) foreign partnerships, and

(E) other areas that the Secretary determines by regulation to present special enforcement considerations.

(2) Items may be treated as nonpartnership items

To the extent that the Secretary determines and provides by regulations that to treat items as partnership items will interfere with the effective and efficient enforcement of this title in any case described in paragraph (1), such items shall be treated as nonpartnership items for purposes of this subchapter.

(3) Special rules

The Secretary may prescribe by regulation such special rules as the Secretary determines

to be necessary to achieve the purposes of this subchapter in any case described in paragraph (1).

(d) Time for determining partner's profits interest in partnership

(1) In general

For purposes of section 6223(b) (relating to special rules for partnerships with more than 100 partners) and paragraph (11) of subsection (a) (relating to 5-percent group), the interest of a partner in the profits of a partnership for a partnership taxable year shall be determined—

(A) in the case of a partner whose entire interest in the partnership is disposed of during such partnership taxable year, as of the moment immediately before such disposition, or

(B) in the case of any other partner, as of the close of the partnership taxable year.

(2) Indirect partners

The Secretary shall prescribe regulations consistent with the principles of paragraph (1) to be applied in the case of indirect partners.

(e) Effect of judicial decisions in certain proceedings

(1) Determinations at partner level

No judicial determination with respect to the income tax liability of any partner not conducted under this subchapter shall be a bar to any adjustment in such partner's income tax liability resulting from—

(A) a proceeding with respect to partnership items under this subchapter, or

(B) a proceeding with respect to items which become nonpartnership items—

(i) by reason of 1 or more of the events described in subsection (b), and

(ii) after the appropriate time for including such items in any other proceeding with respect to nonpartnership items.

(2) Proceedings under section 6228(a)

No judicial determination in any proceeding under subsection (a) of section 6228 with respect to any partnership item shall be a bar to any adjustment in any other partnership item.

(f) Special rule for deductions, losses, and credits of foreign partnerships

Except to the extent otherwise provided in regulations, in the case of any partnership the tax matters partner of which resides outside the United States or the books of which are maintained outside the United States, no deduction, loss, or credit shall be allowable to any partner unless section 6031 is complied with for the partnership's taxable year in which such deduction, loss, or credit arose at such time as the Secretary prescribes by regulations.

(g) Partnership return to be determinative of whether subchapter applies

(1) Determination that subchapter applies

If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter applies to such partnership for such year but such determination is erroneous, then the provisions of this

subchapter are hereby extended to such partnership (and its items) for such taxable year and to partners of such partnership.

(2) Determination that subchapter does not apply

If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter does not apply to such partnership for such year but such determination is erroneous, then the provisions of this subchapter shall not apply to such partnership (and its items) for such taxable year or to partners of such partnership.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 663; amended Pub. L. 98-369, div. A, title VII, § 714(p)(2)(B)–(D), (I), July 18, 1984, 98 Stat. 964, 965; Pub. L. 105-34, title XI, § 1141(b), title XII, §§ 1232(a), 1234(a), Aug. 5, 1997, 111 Stat. 981, 1023, 1024; Pub. L. 105-206, title III, § 3507(a), July 22, 1998, 112 Stat. 772; Pub. L. 107-147, title IV, §§ 416(d)(1)(C), 417(19)(C), Mar. 9, 2002, 116 Stat. 55, 57.)

AMENDMENTS

2002—Subsec. (b)(1)(C). Pub. L. 107-147, § 416(d)(1)(C), inserted “or the Attorney General (or his delegate)” after “Secretary”.

Subsec. (b)(2)(B)(i). Pub. L. 107-147, § 417(19)(C), substituted “section 6227(d)” for “section 6227(c)”.

1998—Subsec. (a)(7). Pub. L. 105-206 inserted at end “The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.”

1997—Subsec. (a)(1)(B)(i). Pub. L. 105-34, § 1234(a), reenacted heading of cl. (i) without change and amended text generally. Prior to amendment, text read as follows: “The term ‘partnership’ shall not include any partnership if—

“(I) such partnership has 10 or fewer partners each of whom is a natural person (other than a nonresident alien) or an estate, and

“(II) each partner's share of each partnership item is the same as his share of every other item.

For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner.”

Subsec. (f). Pub. L. 105-34, § 1141(b), substituted “deductions, losses, and” for “losses and” in subsec. heading and “deduction, loss, or” for “loss or” in two places in text.

Subsec. (g). Pub. L. 105-34, § 1232(a), added subsec. (g).

1984—Subsec. (a)(9). Pub. L. 98-369, § 714(p)(2)(B), substituted “S corporation” for “electing small business corporation”.

Subsec. (b)(2)(B). Pub. L. 98-369, § 714(p)(2)(I), substituted section “6227(c)” for “6227(b)”.

Subsec. (d)(1)(A). Pub. L. 98-369, § 714(p)(2)(C), amended subpar. (A) generally, substituting “disposed of” and “disposition” for “liquidated, sold, or exchanged” and “liquidation, sale, or exchange”, respectively.

Subsec. (f). Pub. L. 98-369, § 714(p)(2)(D), substituted “such loss or credit” for “such deduction or credit”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 416(d)(1)(C) of Pub. L. 107-147 applicable with respect to settlement agreements entered into after Mar. 9, 2002, see section 416(d)(2) of Pub. L. 107-147, set out as a note under section 6224 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, § 3507(b), July 22, 1998, 112 Stat. 772, provided that: “The amendment made by this section [amending this section] shall apply to selections of tax matters partners made by the Secretary of

the Treasury after the date of the enactment of this Act [July 22, 1998].”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1141(b) of Pub. L. 105-34 applicable to taxable years beginning after Aug. 5, 1997, see section 1141(c) of Pub. L. 105-34, set out as a note under section 6031 of this title.

Section 1232(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

Section 1234(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SPECIAL RULE FOR CERTAIN INTERNATIONAL SATELLITE PARTNERSHIPS

Section 406 of Pub. L. 97-248, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Subchapter C of chapter 63 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to tax treatment of partnership items), section 6031 of such Code (relating to returns of partnership income), and section 6046A of such Code (relating to returns as to interest in foreign partnerships) shall not apply to the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, and any organization which is a successor of either of such organizations.”

[§ 6232. Repealed. Pub. L. 100-418, title I, § 1941(b)(1), Aug. 23, 1988, 102 Stat. 1323]

Section, added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 666, related to extension of subchapter provisions, respecting tax treatment of partnership items, to windfall profit tax.

EFFECTIVE DATE OF REPEAL

Repeal applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100-418, set out as an Effective Date of 1988 Amendment note under section 164 of this title.

§ 6233. Extension to entities filing partnership returns, etc.

(a) General rule

If a partnership return is filed by an entity for a taxable year but it is determined that the entity is not a partnership for such year, then, to the extent provided in regulations, the provisions of this subchapter are hereby extended in respect of such year to such entity and its items and to persons holding an interest in such entity.

(b) Similar rules in certain cases

If a partnership return is filed for any taxable year but it is determined that there is no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply.

(Added Pub. L. 98-369, div. A, title VII, § 714(p)(1), July 18, 1984, 98 Stat. 964; amended Pub. L.

104-188, title I, § 1307(c)(3)(B), Aug. 20, 1996, 110 Stat. 1782.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If for any taxable year—

“(1) an entity files a return as an S corporation but it is determined that the entity was not an S corporation for such year, or

“(2) a partnership return or S corporation return is filed but it is determined that there is no entity for such taxable year, then, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104-188, set out as a note under section 641 of this title.

EFFECTIVE DATE

Section effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 31 of this title.

§ 6234. Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return

(a) General rule

If—

(1) a taxpayer files an oversheltered return for a taxable year,

(2) the Secretary makes a determination with respect to the treatment of items (other than partnership items) of such taxpayer for such taxable year, and

(3) the adjustments resulting from such determination do not give rise to a deficiency (as defined in section 6211) but would give rise to a deficiency if there were no net loss from partnership items,

the Secretary is authorized to send a notice of adjustment reflecting such determination to the taxpayer by certified or registered mail.

(b) Oversheltered return

For purposes of this section, the term “oversheltered return” means an income tax return which—

(1) shows no taxable income for the taxable year, and

(2) shows a net loss from partnership items.

(c) Judicial review in the Tax Court

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the day on which the notice of adjustment authorized in subsection (a) is mailed to the taxpayer, the taxpayer may file a petition with the Tax Court for redetermination of the adjustments. Upon the filing of such a petition, the Tax Court shall have jurisdiction to make a declaration with respect to all items (other than partnership items and affected items which require partner level determinations as described in section 6230(a)(2)(A)(i)) for the taxable year to which the notice of adjustment relates, in accordance with the principles of section 6214(a).

Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

(d) Failure to file petition

(1) In general

Except as provided in paragraph (2), if the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (c), the determination of the Secretary set forth in the notice of adjustment that was mailed to the taxpayer shall be deemed to be correct.

(2) Exception

Paragraph (1) shall not apply after the date that the taxpayer—

(A) files a petition with the Tax Court within the time prescribed in subsection (c) with respect to a subsequent notice of adjustment relating to the same taxable year, or

(B) files a claim for refund of an overpayment of tax under section 6511 for the taxable year involved.

If a claim for refund is filed by the taxpayer, then solely for purposes of determining (for the taxable year involved) the amount of any computational adjustment in connection with a partnership proceeding under this subchapter (other than under this section) or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), the items that are the subject of the notice of adjustment shall be presumed to have been correctly reported on the taxpayer's return during the pendency of the refund claim (and, if within the time prescribed by section 6532 the taxpayer commences a civil action for refund under section 7422, until the decision in the refund action becomes final).

(e) Limitations period

(1) In general

Any notice to a taxpayer under subsection (a) shall be mailed before the expiration of the period prescribed by section 6501 (relating to the period of limitations on assessment).

(2) Suspension when Secretary mails notice of adjustment

If the Secretary mails a notice of adjustment to the taxpayer for a taxable year, the period of limitations on the making of assessments shall be suspended for the period during which the Secretary is prohibited from making the assessment (and, in any event, if a proceeding in respect of the notice of adjustment is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(3) Restrictions on assessment

Except as otherwise provided in section 6851, 6852, or 6861, no assessment of a deficiency with respect to any tax imposed by subtitle A attributable to any item (other than a partnership item or any item affected by a partnership item) shall be made—

(A) until the expiration of the applicable 90-day or 150-day period set forth in subsection (c) for filing a petition with the Tax Court, or

(B) if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

(f) Further notices of adjustment restricted

If the Secretary mails a notice of adjustment to the taxpayer for a taxable year and the taxpayer files a petition with the Tax Court within the time prescribed in subsection (c), the Secretary may not mail another such notice to the taxpayer with respect to the same taxable year in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

(g) Coordination with other proceedings under this subchapter

(1) In general

The treatment of any item that has been determined pursuant to subsection (c) or (d) shall be taken into account in determining the amount of any computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), for the taxable year involved. Notwithstanding any other law or rule of law pertaining to the period of limitations on the making of assessments, for purposes of the preceding sentence, any adjustment made in accordance with this section shall be taken into account regardless of whether any assessment has been made with respect to such adjustment.

(2) Special rule in case of computational adjustment

In the case of a computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), the provisions of paragraph (1) shall apply only if the computational adjustment is made within the period prescribed by section 6229 for assessing any tax under subtitle A which is attributable to any partnership item or affected item for the taxable year involved.

(3) Conversion to deficiency proceeding

If—

(A) after the notice referred to in subsection (a) is mailed to a taxpayer for a taxable year but before the expiration of the period for filing a petition with the Tax Court under subsection (c) (or, if a petition is filed with the Tax Court, before the Tax Court makes a declaration for that taxable year), the treatment of any partnership item for the taxable year is finally determined, or any such item ceases to be a partnership item pursuant to section 6231(b), and

(B) as a result of that final determination or cessation, a deficiency can be determined with respect to the items that are the subject of the notice of adjustment,

the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition filed in respect of the notice shall be treated as an action brought under section 6213.

(4) Finally determined

For purposes of this subsection, the treatment of partnership items shall be treated as finally determined if—

(A) the Secretary or the Attorney General (or his delegate) enters into a settlement agreement (within the meaning of section 6224) with the taxpayer regarding such items,

(B) a notice of final partnership administrative adjustment has been issued and—

(i) no petition has been filed under section 6226 and the time for doing so has expired, or

(ii) a petition has been filed under section 6226 and the decision of the court has become final, or

(C) the period within which any tax attributable to such items may be assessed against the taxpayer has expired.

(h) Special rules if Secretary incorrectly determines applicable procedure**(1) Special rule if Secretary erroneously mails notice of adjustment**

If the Secretary erroneously determines that subchapter B does not apply to a taxable year of a taxpayer and consistent with that determination timely mails a notice of adjustment to the taxpayer pursuant to subsection (a) of this section, the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition that is filed in respect of the notice shall be treated as an action brought under section 6213.

(2) Special rule if Secretary erroneously mails notice of deficiency

If the Secretary erroneously determines that subchapter B applies to a taxable year of a taxpayer and consistent with that determination timely mails a notice of deficiency to the taxpayer pursuant to section 6212, the notice of deficiency shall be treated as a notice of adjustment under subsection (a) and any petition that is filed in respect of the notice shall be treated as an action brought under subsection (c).

(Added Pub. L. 105-34, title XII, § 1231(a), Aug. 5, 1997, 111 Stat. 1020; amended Pub. L. 107-147, title IV, § 416(d)(1)(D), Mar. 9, 2002, 116 Stat. 55.)

AMENDMENTS

2002—Subsec. (g)(4)(A). Pub. L. 107-147 inserted “or the Attorney General (or his delegate)” after “Secretary”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 applicable with respect to settlement agreements entered into after Mar. 9, 2002, see section 416(d)(2) of Pub. L. 107-147, set out as a note under section 6224 of this title.

EFFECTIVE DATE

Section applicable to partnership taxable years ending after Aug. 5, 1997, see section 1231(d) of Pub. L. 105-34, set out as an Effective Date of 1997 Amendment note under section 6211 of this title.

Subchapter D—Treatment of Electing Large Partnerships

Part I.	Treatment of partnership items and adjustments.
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Part II.	Partnership level adjustments.
Part III.	Definitions and special rules.

PART I—TREATMENT OF PARTNERSHIP ITEMS AND ADJUSTMENTS

Sec. 6240.	Application of subchapter.
6241.	Partner's return must be consistent with partnership return.
6242.	Procedures for taking partnership adjustments into account.

PRIOR PROVISIONS

A prior subchapter D, Tax Treatment of Subchapter S Items, consisted of sections 6241 to 6245, prior to repeal by Pub. L. 104-188, title I, § 1307(c)(1), Aug. 20, 1996, 110 Stat. 1781.

§ 6240. Application of subchapter**(a) General rule**

This subchapter shall only apply to electing large partnerships and partners in such partnerships.

(b) Coordination with other partnership audit procedures**(1) In general**

Subchapter C of this chapter shall not apply to any electing large partnership other than in its capacity as a partner in another partnership which is not an electing large partnership.

(2) Treatment where partner in other partnership

If an electing large partnership is a partner in another partnership which is not an electing large partnership—

(A) subchapter C of this chapter shall apply to items of such electing large partnership which are partnership items with respect to such other partnership, but

(B) any adjustment under such subchapter C shall be taken into account in the manner provided by section 6242.

(Added Pub. L. 105-34, title XII, § 1222(a), Aug. 5, 1997, 111 Stat. 1009.)

EFFECTIVE DATE

Subchapter applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105-34, as amended, set out as an Effective Date of 1997 Amendment note under section 6011 of this title.

§ 6241. Partner's return must be consistent with partnership return**(a) General rule**

A partner of any electing large partnership shall, on the partner's return, treat each partnership item attributable to such partnership in a manner which is consistent with the treatment of such partnership item on the partnership return.

(b) Underpayment due to inconsistent treatment assessed as math error

Any underpayment of tax by a partner by reason of failing to comply with the requirements of subsection (a) shall be assessed and collected in the same manner as if such underpayment

were on account of a mathematical or clerical error appearing on the partner's return. Paragraph (2) of section 6213(b) shall not apply to any assessment of an underpayment referred to in the preceding sentence.

(c) Adjustments not to affect prior year of partners

(1) In general

Except as provided in paragraph (2), subsections (a) and (b) shall apply without regard to any adjustment to the partnership item under part II.

(2) Certain changes in distributive share taken into account by partner

(A) In general

To the extent that any adjustment under part II involves a change under section 704 in a partner's distributive share of the amount of any partnership item shown on the partnership return, such adjustment shall be taken into account in applying this title to such partner for the partner's taxable year for which such item was required to be taken into account.

(B) Coordination with deficiency procedures

(i) In general

Subchapter B shall not apply to the assessment or collection of any underpayment of tax attributable to an adjustment referred to in subparagraph (A).

(ii) Adjustment not precluded

Notwithstanding any other law or rule of law, nothing in subchapter B (or in any proceeding under subchapter B) shall preclude the assessment or collection of any underpayment of tax (or the allowance of any credit or refund of any overpayment of tax) attributable to an adjustment referred to in subparagraph (A) and such assessment or collection or allowance (or any notice thereof) shall not preclude any notice, proceeding, or determination under subchapter B.

(C) Period of limitations

The period for—

- (i) assessing any underpayment of tax, or
- (ii) filing a claim for credit or refund of any overpayment of tax,

attributable to an adjustment referred to in subparagraph (A) shall not expire before the close of the period prescribed by section 6248 for making adjustments with respect to the partnership taxable year involved.

(D) Tiered structures

If the partner referred to in subparagraph (A) is another partnership or an S corporation, the rules of this paragraph shall also apply to persons holding interests in such partnership or S corporation (as the case may be); except that, if such partner is an electing large partnership, the adjustment referred to in subparagraph (A) shall be taken into account in the manner provided by section 6242.

(d) Addition to tax for failure to comply with section

For addition to tax in case of partner's disregard of requirements of this section, see part II of subchapter A of chapter 68.

(Added Pub. L. 105-34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1009.)

PRIOR PROVISIONS

A prior section 6241, added Pub. L. 97-354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that tax treatment be determined at the corporate level, prior to repeal by Pub. L. 104-188, title I, §§1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

§ 6242. Procedures for taking partnership adjustments into account

(a) Adjustments flow through to partners for year in which adjustment takes effect

(1) In general

If any partnership adjustment with respect to any partnership item takes effect (within the meaning of subsection (d)(2)) during any partnership taxable year and if an election under paragraph (2) does not apply to such adjustment, such adjustment shall be taken into account in determining the amount of such item for the partnership taxable year in which such adjustment takes effect. In applying this title to any person who is (directly or indirectly) a partner in such partnership during such partnership taxable year, such adjustment shall be treated as an item actually arising during such taxable year.

(2) Partnership liable in certain cases

If—

(A) a partnership elects under this paragraph to not take an adjustment into account under paragraph (1),

(B) a partnership does not make such an election but in filing its return for any partnership taxable year fails to take fully into account any partnership adjustment as required under paragraph (1), or

(C) any partnership adjustment involves a reduction in a credit which exceeds the amount of such credit determined for the partnership taxable year in which the adjustment takes effect,

the partnership shall pay to the Secretary an amount determined by applying the rules of subsection (b)(4) to the adjustments not so taken into account and any excess referred to in subparagraph (C).

(3) Offsetting adjustments taken into account

If a partnership adjustment requires another adjustment in a taxable year after the adjusted year and before the partnership taxable year in which such partnership adjustment takes effect, such other adjustment shall be taken into account under this subsection for the partnership taxable year in which such partnership adjustment takes effect.

(4) Coordination with part II

Amounts taken into account under this subsection for any partnership taxable year shall continue to be treated as adjustments for the

adjusted year for purposes of determining whether such amounts may be readjusted under part II.

(b) Partnership liable for interest and penalties

(1) In general

If a partnership adjustment takes effect during any partnership taxable year and such adjustment results in an imputed underpayment for the adjusted year, the partnership—

(A) shall pay to the Secretary interest computed under paragraph (2), and

(B) shall be liable for any penalty, addition to tax, or additional amount as provided in paragraph (3).

(2) Determination of amount of interest

The interest computed under this paragraph with respect to any partnership adjustment is the interest which would be determined under chapter 67—

(A) on the imputed underpayment determined under paragraph (4) with respect to such adjustment,

(B) for the period beginning on the day after the return due date for the adjusted year and ending on the return due date for the partnership taxable year in which such adjustment takes effect (or, if earlier, in the case of any adjustment to which subsection (a)(2) applies, the date on which the payment under subsection (a)(2) is made).

Proper adjustments in the amount determined under the preceding sentence shall be made for adjustments required for partnership taxable years after the adjusted year and before the year in which the partnership adjustment takes effect by reason of such partnership adjustment.

(3) Penalties

A partnership shall be liable for any penalty, addition to tax, or additional amount for which it would have been liable if such partnership had been an individual subject to tax under chapter 1 for the adjusted year and the imputed underpayment determined under paragraph (4) were an actual underpayment (or understatement) for such year.

(4) Imputed underpayment

For purposes of this subsection, the imputed underpayment determined under this paragraph with respect to any partnership adjustment is the underpayment (if any) which would result—

(A) by netting all adjustments to items of income, gain, loss, or deduction and by treating any net increase in income as an underpayment equal to the amount of such net increase multiplied by the highest rate of tax in effect under section 1 or 11 for the adjusted year, and

(B) by taking adjustments to credits into account as increases or decreases (whichever is appropriate) in the amount of tax.

For purposes of the preceding sentence, any net decrease in a loss shall be treated as an increase in income and a similar rule shall apply to a net increase in a loss.

(c) Administrative provisions

(1) In general

Any payment required by subsection (a)(2) or (b)(1)(A)—

(A) shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C, and

(B) shall be paid on or before the return due date for the partnership taxable year in which the partnership adjustment takes effect.

(2) Interest

For purposes of determining interest, any payment required by subsection (a)(2) or (b)(1)(A) shall be treated as an underpayment of tax.

(3) Penalties

(A) In general

In the case of any failure by any partnership to pay on the date prescribed therefor any amount required by subsection (a)(2) or (b)(1)(A), there is hereby imposed on such partnership a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term “underpayment” means the excess of any payment required under this section over the amount (if any) paid on or before the date prescribed therefor.

(B) Accuracy-related and fraud penalties made applicable

For purposes of part II of subchapter A of chapter 68, any payment required by subsection (a)(2) shall be treated as an underpayment of tax.

(d) Definitions and special rules

For purposes of this section—

(1) Partnership adjustment

The term “partnership adjustment” means any adjustment in the amount of any partnership item of an electing large partnership.

(2) When adjustment takes effect

A partnership adjustment takes effect—

(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under part II, when such decision becomes final,

(B) in the case of an adjustment pursuant to any administrative adjustment request under section 6251, when such adjustment is allowed by the Secretary, or

(C) in any other case, when such adjustment is made.

(3) Adjusted year

The term “adjusted year” means the partnership taxable year to which the item being adjusted relates.

(4) Return due date

The term “return due date” means, with respect to any taxable year, the date prescribed for filing the partnership return for such taxable year (determined without regard to extensions).

(5) Adjustments involving changes in character

Under regulations, appropriate adjustments in the application of this section shall be made

for purposes of taking into account partnership adjustments which involve a change in the character of any item of income, gain, loss, or deduction.

(e) Payments nondeductible

No deduction shall be allowed under subtitle A for any payment required to be made by an electing large partnership under this section.

(Added Pub. L. 105-34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1010.)

PRIOR PROVISIONS

A prior section 6242, added Pub. L. 97-354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that shareholder's return be consistent with corporate return, prior to repeal by Pub. L. 104-188, title I, §§1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

A prior section 6243, added Pub. L. 97-354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that shareholders be notified of proceedings and given opportunity to participate, prior to repeal by Pub. L. 104-188, title I, §§1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

A prior section 6244, added Pub. L. 97-354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that certain provisions of subchapter C apply to subchapter S items, prior to repeal by Pub. L. 104-188, title I, §§1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

**PART II—PARTNERSHIP LEVEL
ADJUSTMENTS**

Subpart

- A. Adjustments by Secretary.
- B. Claims for adjustments by partnership.

SUBPART A—ADJUSTMENTS BY SECRETARY

Sec.

- 6245. Secretarial authority.
- 6246. Restrictions on partnership adjustments.
- 6247. Judicial review of partnership adjustment.
- 6248. Period of limitations for making adjustments.

§ 6245. Secretarial authority

(a) General rule

The Secretary is authorized and directed to make adjustments at the partnership level in any partnership item to the extent necessary to have such item be treated in the manner required.

(b) Notice of partnership adjustment

(1) In general

If the Secretary determines that a partnership adjustment is required, the Secretary is authorized to send notice of such adjustment to the partnership by certified mail or registered mail. Such notice shall be sufficient if mailed to the partnership at its last known address even if the partnership has terminated its existence.

(2) Further notices restricted

If the Secretary mails a notice of a partnership adjustment to any partnership for any partnership taxable year and the partnership files a petition under section 6247 with respect to such notice, in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact, the Secretary shall not mail an-

other such notice to such partnership with respect to such taxable year.

(3) Authority to rescind notice with partnership consent

The Secretary may, with the consent of the partnership, rescind any notice of a partnership adjustment mailed to such partnership. Any notice so rescinded shall not be treated as a notice of a partnership adjustment, for purposes of this section, section 6246, and section 6247, and the taxpayer shall have no right to bring a proceeding under section 6247 with respect to such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

(Added Pub. L. 105-34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1013.)

PRIOR PROVISIONS

A prior section 6245, added Pub. L. 97-354, §4(a), Oct. 19, 1982, 96 Stat. 1692, defined "subchapter S item" for purposes of subchapter, prior to repeal by Pub. L. 104-188, title I, §§1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

§ 6246. Restrictions on partnership adjustments

(a) General rule

Except as otherwise provided in this chapter, no adjustment to any partnership item may be made (and no levy or proceeding in any court for the collection of any amount resulting from such adjustment may be made, begun or prosecuted) before—

(1) the close of the 90th day after the day on which a notice of a partnership adjustment was mailed to the partnership, and

(2) if a petition is filed under section 6247 with respect to such notice, the decision of the court has become final.

(b) Premature action may be enjoined

Notwithstanding section 7421(a), any action which violates subsection (a) may be enjoined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action under this subsection unless a timely petition has been filed under section 6247 and then only in respect of the adjustments that are the subject of such petition.

(c) Exceptions to restrictions on adjustments

(1) Adjustments arising out of math or clerical errors

(A) In general

If the partnership is notified that, on account of a mathematical or clerical error appearing on the partnership return, an adjustment to a partnership item is required, rules similar to the rules of paragraphs (1) and (2) of section 6213(b) shall apply to such adjustment.

(B) Special rule

If an electing large partnership is a partner in another electing large partnership, any adjustment on account of such partnership's failure to comply with the require-

ments of section 6241(a) with respect to its interest in such other partnership shall be treated as an adjustment referred to in subparagraph (A), except that paragraph (2) of section 6213(b) shall not apply to such adjustment.

(2) Partnership may waive restrictions

The partnership shall at any time (whether or not a notice of partnership adjustment has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the making of any partnership adjustment.

(d) Limit where no proceeding begun

If no proceeding under section 6247 is begun with respect to any notice of a partnership adjustment during the 90-day period described in subsection (a), the amount for which the partnership is liable under section 6242 (and any increase in any partner's liability for tax under chapter 1 by reason of any adjustment under section 6242(a)) shall not exceed the amount determined in accordance with such notice.

(Added Pub. L. 105-34, title XII, § 1222(a), Aug. 5, 1997, 111 Stat. 1013.)

§ 6247. Judicial review of partnership adjustment

(a) General rule

Within 90 days after the date on which a notice of a partnership adjustment is mailed to the partnership with respect to any partnership taxable year, the partnership may file a petition for a readjustment of the partnership items for such taxable year with—

- (1) the Tax Court,
- (2) the district court of the United States for the district in which the partnership's principal place of business is located, or
- (3) the Claims Court.

(b) Jurisdictional requirement for bringing action in district court or Claims Court

(1) In general

A readjustment petition under this section may be filed in a district court of the United States or the Claims Court only if the partnership filing the petition deposits with the Secretary, on or before the date the petition is filed, the amount for which the partnership would be liable under section 6242(b) (as of the date of the filing of the petition) if the partnership items were adjusted as provided by the notice of partnership adjustment. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt to satisfy such requirement and any shortfall of the amount required to be deposited is timely corrected.

(2) Interest payable

Any amount deposited under paragraph (1), while deposited, shall not be treated as a payment of tax for purposes of this title (other than chapter 67).

(c) Scope of judicial review

A court with which a petition is filed in accordance with this section shall have jurisdiction

to determine all partnership items of the partnership for the partnership taxable year to which the notice of partnership adjustment relates and the proper allocation of such items among the partners (and the applicability of any penalty, addition to tax, or additional amount for which the partnership may be liable under section 6242(b)).

(d) Determination of court reviewable

Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

(e) Effect of decision dismissing action

If an action brought under this section is dismissed other than by reason of a rescission under section 6245(b)(3), the decision of the court dismissing the action shall be considered as its decision that the notice of partnership adjustment is correct, and an appropriate order shall be entered in the records of the court.

(Added Pub. L. 105-34, title XII, § 1222(a), Aug. 5, 1997, 111 Stat. 1014.)

§ 6248. Period of limitations for making adjustments

(a) General rule

Except as otherwise provided in this section, no adjustment under this subpart to any partnership item for any partnership taxable year may be made after the date which is 3 years after the later of—

- (1) the date on which the partnership return for such taxable year was filed, or
- (2) the last day for filing such return for such year (determined without regard to extensions).

(b) Extension by agreement

The period described in subsection (a) (including an extension period under this subsection) may be extended by an agreement entered into by the Secretary and the partnership before the expiration of such period.

(c) Special rule in case of fraud, etc.

(1) False return

In the case of a false or fraudulent partnership return with intent to evade tax, the adjustment may be made at any time.

(2) Substantial omission of income

If any partnership omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in its return, subsection (a) shall be applied by substituting "6 years" for "3 years".

(3) No return

In the case of a failure by a partnership to file a return for any taxable year, the adjustment may be made at any time.

(4) Return filed by Secretary

For purposes of this section, a return executed by the Secretary under subsection (b) of

section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

(d) Suspension when Secretary mails notice of adjustment

If notice of a partnership adjustment with respect to any taxable year is mailed to the partnership, the running of the period specified in subsection (a) (as modified by the other provisions of this section) shall be suspended—

- (1) for the period during which an action may be brought under section 6247 (and, if a petition is filed under section 6247 with respect to such notice, until the decision of the court becomes final), and
- (2) for 1 year thereafter.

(Added Pub. L. 105-34, title XII, § 1222(a), Aug. 5, 1997, 111 Stat. 1015.)

SUBPART B—CLAIMS FOR ADJUSTMENTS BY
PARTNERSHIP

Sec.

6251. Administrative adjustment requests.

6252. Judicial review where administrative adjustment request is not allowed in full.

§ 6251. Administrative adjustment requests

(a) General rule

A partnership may file a request for an administrative adjustment of partnership items for any partnership taxable year at any time which is—

- (1) within 3 years after the later of—
 - (A) the date on which the partnership return for such year is filed, or
 - (B) the last day for filing the partnership return for such year (determined without regard to extensions), and
- (2) before the mailing to the partnership of a notice of a partnership adjustment with respect to such taxable year.

(b) Secretarial action

If a partnership files an administrative adjustment request under subsection (a), the Secretary may allow any part of the requested adjustments.

(c) Special rule in case of extension under section 6248

If the period described in section 6248(a) is extended pursuant to an agreement under section 6248(b), the period prescribed by subsection (a)(1) shall not expire before the date 6 months after the expiration of the extension under section 6248(b).

(Added Pub. L. 105-34, title XII, § 1222(a), Aug. 5, 1997, 111 Stat. 1016.)

§ 6252. Judicial review where administrative adjustment request is not allowed in full

(a) In general

If any part of an administrative adjustment request filed under section 6251 is not allowed by the Secretary, the partnership may file a petition for an adjustment with respect to the partnership items to which such part of the request relates with—

- (1) the Tax Court,

- (2) the district court of the United States for the district in which the principal place of business of the partnership is located, or
- (3) the Claims Court.

(b) Period for filing petition

A petition may be filed under subsection (a) with respect to partnership items for a partnership taxable year only—

- (1) after the expiration of 6 months from the date of filing of the request under section 6251, and
- (2) before the date which is 2 years after the date of such request.

The 2-year period set forth in paragraph (2) shall be extended for such period as may be agreed upon in writing by the partnership and the Secretary.

(c) Coordination with subpart A

(1) Notice of partnership adjustment before filing of petition

No petition may be filed under this section after the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates.

(2) Notice of partnership adjustment after filing but before hearing of petition

If the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates after the filing of a petition under this subsection but before the hearing of such petition, such petition shall be treated as an action brought under section 6247 with respect to such notice, except that subsection (b) of section 6247 shall not apply.

(3) Notice must be before expiration of statute of limitations

A notice of a partnership adjustment for the partnership taxable year shall be taken into account under paragraphs (1) and (2) only if such notice is mailed before the expiration of the period prescribed by section 6248 for making adjustments to partnership items for such taxable year.

(d) Scope of judicial review

Except in the case described in paragraph (2) of subsection (c), a court with which a petition is filed in accordance with this section shall have jurisdiction to determine only those partnership items to which the part of the request under section 6251 not allowed by the Secretary relates and those items with respect to which the Secretary asserts adjustments as offsets to the adjustments requested by the partnership.

(e) Determination of court reviewable

Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

(Added Pub. L. 105-34, title XII, § 1222(a), Aug. 5, 1997, 111 Stat. 1016.)

PART III—DEFINITIONS AND SPECIAL
RULES

Sec.
6255. Definitions and special rules.

§ 6255. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Electing large partnership

The term “electing large partnership” has the meaning given to such term by section 775.

(2) Partnership item

The term “partnership item” has the meaning given to such term by section 6231(a)(3).

(b) Partners bound by actions of partnership, etc.

(1) Designation of partner

Each electing large partnership shall designate (in the manner prescribed by the Secretary) a partner (or other person) who shall have the sole authority to act on behalf of such partnership under this subchapter. In any case in which such a designation is not in effect, the Secretary may select any partner as the partner with such authority.

(2) Binding effect

An electing large partnership and all partners of such partnership shall be bound—

(A) by actions taken under this subchapter by the partnership, and

(B) by any decision in a proceeding brought under this subchapter.

(c) Partnerships having principal place of business outside the United States

For purposes of sections 6247 and 6252, a principal place of business located outside the United States shall be treated as located in the District of Columbia.

(d) Treatment where partnership ceases to exist

If a partnership ceases to exist before a partnership adjustment under this subchapter takes effect, such adjustment shall be taken into account by the former partners of such partnership under regulations prescribed by the Secretary.

(e) Date decision becomes final

For purposes of this subchapter, the principles of section 7481(a) shall be applied in determining the date on which a decision of a district court or the Claims Court becomes final.

(f) Partnerships in cases under title 11 of the United States Code

(1) Suspension of period of limitations on making adjustment, assessment, or collection

The running of any period of limitations provided in this subchapter on making a partnership adjustment (or provided by section 6501 or 6502 on the assessment or collection of any amount required to be paid under section 6242) shall, in a case under title 11 of the United States Code, be suspended during the period during which the Secretary is prohibited by reason of such case from making the adjustment (or assessment or collection) and—

(A) for adjustment or assessment, 60 days thereafter, and

(B) for collection, 6 months thereafter.

A rule similar to the rule of section 6213(f)(2) shall apply for purposes of section 6246.

(2) Suspension of period of limitation for filing for judicial review

The running of the period specified in section 6247(a) or 6252(b) shall, in a case under title 11 of the United States Code, be suspended during the period during which the partnership is prohibited by reason of such case from filing a petition under section 6247 or 6252 and for 60 days thereafter.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subchapter, including regulations—

(1) to prevent abuse through manipulation of the provisions of this subchapter, and

(2) providing that this subchapter shall not apply to any case described in section 6231(c)(1) (or the regulations prescribed thereunder) where the application of this subchapter to such a case would interfere with the effective and efficient enforcement of this title.

In any case to which this subchapter does not apply by reason of paragraph (2), rules similar to the rules of sections 6229(f) and 6255(f) shall apply.

(Added Pub. L. 105-34, title XII, § 1222(a), Aug. 5, 1997, 111 Stat. 1017.)

CHAPTER 64—COLLECTION

Subchapter	Sec. ¹
A. General provisions	6301
B. Receipt of payment	6311
C. Lien for taxes	6321
D. Seizure of property for collection of taxes	6331
[E. Repealed.]	

AMENDMENTS

1990—Pub. L. 101-508, title XI, § 11801(b)(14), Nov. 5, 1990, 104 Stat. 1388-522, struck out item for subchapter E “Collection of State individual income taxes”.

1972—Pub. L. 92-512, title II, § 202(b), Oct. 20, 1972, 86 Stat. 944, added item for subchapter E.

Subchapter A—General Provisions

Sec.	
6301.	Collection authority
6302.	Mode or time of collection.
6303.	Notice and demand for tax.
6304.	Fair tax collection practices.
6305.	Collection of certain liability.
6306.	Qualified tax collection contracts.

AMENDMENTS

2004—Pub. L. 108-357, title VIII, § 881(a)(2)(B), Oct. 22, 2004, 118 Stat. 1626, added item 6306.

1998—Pub. L. 105-206, title III, § 3466(b), July 22, 1998, 112 Stat. 769, added item 6304.

1976—Pub. L. 94-455, title XIX, § 1906(b)(5), Oct. 4, 1976, 90 Stat. 1833, struck out item “6304. Collection under the Tariff Act”.

1975—Pub. L. 93-647, § 101(b)(2), Jan. 4, 1975, 88 Stat. 2358, added item 6305.

¹ Section numbers editorially supplied.